

EXHIBIT A  
THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S CONSOLIDATED STATEMENT

<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
1	Apportionment No. 1	Following an investigation, the Reclamation Service (precursor to the Bureau of Reclamation) (both the Reclamation Service and Bureau of Reclamation are referred to herein as “Reclamation”) recommended that Congress authorize a storage reservoir near Elephant Butte, New Mexico, rather than an alternative site at El Paso, Texas, to capture, store, and regulate torrential and storm water flows in the Upper Rio Grande.	See NM-EX 300, F.H. Newell, Second Annual Report of the Reclamation Service, H.R. Doc. No. 58-44, at 375-80 (1904); NM-EX 301, B.M. Hall, A Discussion of the Past and Present Plans for Irrigation of the Rio Grande Valley, 52 (Nov. 1904); NM-EX 106, Kryloff Rep. at 6; see also Texas v. New Mexico, 138 S. Ct. 954, 957(2018) (“The federal government responded by proposing, among other things, to build a reservoir and guarantee Mexico a regular and regulated release of water. Eventually, the government identified a potential dam site near Elephant Butte, New Mexico, about 105 miles north of the Texas state line.”)	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-106: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. <i>Texas v. New Mexico</i> , 138 S. Ct. 954, 957 (2018): Case law/legal opinions do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. This paragraph is misleading in that the source documents provide additional factual context that New Mexico excluded. The United States Reclamation Service (Reclamation) did recommend construction of a storage reservoir near Elephant Butte over another site at El Paso, Texas, and that the reservoir was to capture and store flood waters. However, review of the provided primary-source documents – F.H. Newell’s Second Annual Report of the Reclamation Service (1904), NM-EX-300, and B.M. Hall’s A Discussion of Past and Present Plans for Irrigation of the Rio Grande Valley (Nov. 1904), NM-EX 301 – indicates that these were not the only waters contemplated to be captured and stored for later use. Newell’s report observed that the “proposed [Elephant Butte] reservoir” was “the only . . . with a capacity large enough to utilize the entire flow of the drainage basin. It is situated sufficiently low in the basin to intercept, practically, all of the waters . . . .” – an inclusive statement of the waters to be stored. Similarly, Hall’s report – which considered dams at both the Elephant Butte and El Paso sites before endorsing the former over the latter – noted that with regard to “these projects, or any other plan of water storage on the Rio Grande, it is well to keep in mind the following facts,” of which the second was: “All of the water that comes down the river is needed for irrigation. We cannot afford to waste any of it.” Declaration of Scott A. Miltenberger, Ph.D. in Support of the State of Texas’s Oppositions to the State of New Mexico’s Motions for Partial Summary Judgment and Briefs in Support (Miltenberger Dec. in Opp. to NM) at TX_MSJ_007371, paragraphs 1 – 8.	Apportionment page 1	N/A
2	Apportionment No. 2	At the Twelfth National Irrigation Congress in 1904, Reclamation engineer Benjamin Hall reported that the proposed reservoir at Elephant Butte was preferable to the project proposed near El Paso because it would have a greater storage capacity, would minimize flooding that would render unusable irrigable land in New Mexico, and would impound sufficient water to irrigate 110,000 acres in New Mexico in addition to making deliveries to Mexico and irrigable land in Texas.	NM-EX 303, Guy Elliott Mitchell, The Official Proceedings of the Twelfth National Irrigation Congress Held at El Paso, Texas, Nov. 15-16-17-18, 1904, 213-15 (1905); see also NM- EX 111, Miltenberger Rep. at 8; NM-EX 112, Stevens Rep. at 17.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, undisputed.	Apportionment page 1	N/A
3	Apportionment No. 3	The Reclamation proposal recommended delivery of water as between the lands in southern New Mexico and Texas based on the ratio of project lands within each state.	NM-EX 220, Miltenberger Dep. (June 8, 2020) at 39:7-20.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-220: <i>See</i> General Objection #8. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, disputed in part. This paragraph is misleading in that the cited deposition testimony is incomplete, and taken out of context. At the subject deposition, counsel for New Mexico read a portion of paragraph 6 of the Texas Complaint to Texas’s expert Scott Miltenberger, Ph.D. to which Dr. Miltenberger responded that he agreed with the statement. The full statement that Dr. Miltenberger agreed with was the following: “The 1904 irrigation Congress also recommended delivery of water from the proposed project as between the lands in southern New Mexico and in Texas based on the ratio of project lands within each state. The recommendations of the 1904 irrigation Congress were adopted by the secretary of the interior and the Rio Grande Reclamation project was authorized pursuant to the Rio Grande Reclamation Act.” NM-EX 220, Miltenberger Dep. (June 8, 2020) 39:7-20 (emphasis added). The New Mexico proposed “fact” number 3 excludes the phrase “from the proposed project,” as well as the language regarding authorization of the Project. The testimony immediately before the quoted testimony is also relevant for context: Dr. Miltenberger agreed with paragraph 4 of the Texas Complaint as follows: “Once delivered to Elephant Butte Reservoir, the water is allocated and belongs to the Rio Grande project beneficiaries in southern New Mexico and in Texas based upon allocations derived from the Rio Grande project authorization and relevant contractual arrangements.” NM-EX 220, Miltenberger Dep. (June 8, 2020) 38:22-39:6.	Apportionment page 1	N/A
4	Apportionment No. 4	Delegates from Mexico, New Mexico, and Texas at the Irrigation Congress each approved the Reclamation proposal and unanimously passed a resolution declaring that the proposed project would affect “an equitable distribution of the waters of the Rio Grande with due regard to the rights of New Mexico, Texas and Mexico.”	NM-EX 303, Guy Elliott Mitchell, The Official Proceedings of the Twelfth National Irrigation Congress Held at El Paso, Texas, Nov. 15-16-17-18, 1904, 107 (1905); NM-EX 111, Miltenberger Rep. at 9; NM-EX 106, Kryloff Rep. at 6.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-106: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Apportionment page 1-2; Apportionment page 40	N/A

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5	Apportionment No. 5	In support of Congressional authorization to begin work on the reservoir, the Reclamation Service Director testified to Congress that the project would be engineered to supply enough water to irrigate 20,000-25,000 acres in Mexico, 110,000 in New Mexico, with the “balance” to Texas. Mr. Newell further testified that “New Mexico, Texas, and old Mexico will divide the water in about the proportion stated.”	See NM-EX 305, The Reclamation Work of the Government Under the National Irrigation Act: Hearing Before the H. Comm. on Irrigation of Arid Lands, 59 Cong. 222 (1906) (statement of Frederick Newell, Reclamation Service Director); NM-EX 112, Stevens Rep. at 18.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, disputed. This paragraph is factually incorrect. Neither cited source (NM-EX 305 and NM-EX 112) indicates that Newell made the quoted remarks in relation to congressional authorization for work on the reservoir. Congress authorized the Rio Grande Project, with Elephant Butte Dam as its centerpiece, the previous year, in 1905. Additionally, the provided quote is incomplete and misleading. According to both cited sources, Newell identified the “balance” of the acreage distribution as “the balance below El Paso on the Texan side of the river.” Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 - 7, 9.	Apportionment page 2	N/A
6	Apportionment No. 6	In 1906, the United States entered into a treaty with the Republic of Mexico for annual delivery of 60,000 acre-feet of water to the Acequia Madre, above Juarez, in years of full supply, with proportionate reductions in times of shortage.	NM-EX 307, Distribution of the Waters of the Rio Grande, Mex.-U.S., May 21, 1906, 34 Stat. 2953; NM-EX 111, Miltenberger Rep. at 9; see also Texas v. New Mexico, 138 S. Ct. 954, 957 (2018) (“in 1906, the United States agreed by treaty to deliver 60,000 acre-feet of water annually to Mexico upon completion of the new reservoir.”)	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. <i>Texas v. New Mexico</i> , 138 S. Ct. 954, 957 (2018): Case law/legal opinions do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, undisputed.	Apportionment page 2	N/A
7	Apportionment No. 7	In 1907, Congress authorized construction to begin on the Elephant Butte Reservoir. An Act Making Appropriations for Sundry Civil Expenses of the Government for the Fiscal Year Ending June Thirtieth, Nineteen Hundred and Eight, and for Other Purposes, Pub. Law No. 59- 253, 34 Stat. 1295 (1907);	NM-EX 112, Stevens Rep. at 19.	NO	<b>From TX's 12/22/20 Filings:</b> Pub. Law No. 59-253, 34 Stat. 1295 (1907): The cited statute does not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). NM-EX-112: See General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph is factually incorrect. The 1907 Appropriations Act authorized, for the Department of State, \$1 million “Toward the construction of a dam for storing and delivering sixty thousand acre-feet of water annually . . . as provided by a convention between the United States and Mexico . . . .”; it did not authorize construction of the dam itself. Congress authorized construction of Elephant Butte Dam along with the Rio Grande Project in 1905. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 9-10.	Apportionment page 2	N/A
8	Apportionment No. 8	In its initial conception, Reclamation engineered the Project to deliver an annual release between 750,000 acre-feet and 800,000 acre-feet, enough to provide 60,000 acre-feet of water to Mexico and to irrigate 155,000 acres in the United States (assuming delivery of three acre-feet per acre, plus twenty percent loss in the distribution system), of which 110,000 acres would be situated in New Mexico and 45,000 in Texas.	See NM-EX 310, Fund for Reclamation of Arid Lands, H.R. Doc. 61-1262, at 106 (1911); NM-EX 112, Stevens Rep. at 21.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, disputed. This paragraph is factually incomplete and mischaracterizes the cited primary-source document, Fund for Reclamation of Arid Lands, H.R. Doc 61-1262 (1911). NM-EX-310. References to 750,000 acre-feet and 800,000 acre-feet in the document are projections and estimates of “annual supply” from the reservoir – not as expected release figures. These estimates were based not only on reservoir capacity, but also flow, evaporation, and (as acknowledged by the paragraph), a three acre-feet per acre water duty and losses. Forty percent and not “20 per cent” was the total allowance to be made for those losses: 1) “loss in the distribution system” (“20 per cent”), and 2) “losses in transit” (“20 per cent”). Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 11.	Apportionment page 2	N/A
9	Apportionment No. 9; similar language in Notice No. 8	Reclamation appropriated water for the Project under New Mexico territorial law, consistent with Section 8 of the Reclamation Act. Specifically, Reclamation provided notice to the Territorial Engineer for the Territory of New Mexico to appropriate and store 730,000 acre- feet per year at Elephant Butte Reservoir in 1906 and to appropriate all “unappropriated waters of the Rio Grande” at Elephant Butte in 1908.	See NM-EX 306, Letter from B.M. Hall, Supervising Engineer, United States Reclamation Service, to David L. White, Territorial Irrigation Engineer, Territory of New Mexico (Jan. 23, 1906); NM-EX 309, Letter from Louis C. Hill, Supervising Engineer, United States Reclamation Service, to Vernon L. Sullivan, Territorial Engineer, Territory of New Mexico (Apr. 1908); NM-EX 111, Miltenberger Rep. at 9-10; see also Texas v. New Mexico, 138 S. Ct. 954, 957 (2018) (“After obtaining the necessary water rights, the United States began construction of the dam in 1910 and completed it in 1916 as part of a broader infrastructure development known as the Rio Grande Project.”).	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. <i>Texas v. New Mexico</i> , 138 S. Ct. 954, 957(2018): Case law/legal opinions do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole and/or in part.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, disputed. This paragraph is misleading. Reclamation made these filings – Letter from B.M. Hall, Supervising Engineer, United States Reclamation Service, to David L. White, Territorial Irrigation Engineer, Territory of New Mexico (Jan. 23, 1906) (NM-EX 306), and NM-EX 309, a Letter from Louis C. Hill, Supervising Engineer, United States Reclamation Service, to Vernon L. Sullivan, Territorial Irrigation Engineer, Territory of New Mexico (Apr. 1908). However, neither filing cited Section 8 of the 1902 National Reclamation Act. Both filings instead referenced the United States “authority” under the 1902 Reclamation Act to pursue construction of “certain irrigation works in connection with the so-called Rio Grande Project,” and observed that “operation of the works in question contemplates the diversion of water from the Rio Grande River.” Both filings also cited New Mexico territorial law – Sec. 22, Chap. 102 of the 1905 laws, in the case of the 1906 filing, NM-EX-306; and Sec. 40, Chap. 49 of the 1907 laws, in the case of the 1908 filing, NM-EX-309. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 12.	Apportionment page 2; Apportionment page 37	N/A
9	Apportionment No. 9; similar language in Notice No. 8	Ultimately, the Rio Grande water appropriated by the United States was limited by the size of the Project.	N/A	NO		New Mexico failed to cite to any evidence in support of the last sentence in the paragraph. Fed. R. Civ. P. 56(c). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	Apportionment page2; Apportionment page 37 Notice page 3	Opp. to US - page 30 -page 45

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10	Notice No. 8	From that point forward, the New Mexico State Engineer considered the surface waters of the Rio Grande below Elephant Butte Reservoir to be fully appropriated.	See NM-EX 002, D’Antonio Decl. at ¶ 9; NM-EX 200, Barroll Dep. (Aug. 10, 2020) at 424:15-425:4, 426:13-18; NM-EX 106, Kryloff Rep. at 26-27; NM-EX 205, D’Antonio Dep. (June 26, 2020) at 274:1-5.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 200, 205: <i>See</i> General Objection #8. NM-EX 106: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Notice page 3	Opp. to US - page 45
11	N/A	Notably, the water that Reclamation appropriated in its 1906 and 1908 filings with the New Mexico Territorial Engineer did not include groundwater.	NM-EX 112, Stevens Rep. at 11; see also NM-EX 113, Stevens Reb. Rep. at 8. Cf. NM-EX 310, Fund for Reclamation of Arid Lands, H.R. Doc. No. 61-1262, at 106-07 (1911) (discussing return seepage as a source of project supply without mention of groundwater resources).	NO	NM-EX-112, 113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp. to US - page 30 -page 45
12	Apportionment No. 10; similar language in Notice No. 11	In 1915, while Project construction was ongoing, Reclamation began water deliveries through the Project.	See NM-EX 404, Robert Autobee, United States Bureau of Reclamation, Rio Grande Project, at 12 (1994); NM-EX 311, United States Reclamation Service, Project History Rio Grande Project Year 1915, at 137-141 (1915).	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-404: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, undisputed.	Apportionment page 3; Apportionment page 39; Apportionment page 40 Notice page 3, 16, 17	N/A
13	Apportionment No. 11	By 1919, construction of the Elephant Butte Dam and the major diversion works of the Project was complete.	NM-EX 312, United States Reclamation Service, Project History Rio Grande Project Year 1919, at 4-5 (1919) (reporting “practical completion of the main canal system, including diversion dams, for the lands of the New Mexico and El Paso County Irrigation Districts”); see also NM-EX 111, Miltenberger Rep. at 10.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, undisputed.	Apportionment page 3; Apportionment page 39	Opp. to US - page
14	Apportionment No. 12	By 1921, Reclamation reported that the final “determined irrigable area of the project” in the United States was 155,000 acres.	See NM-EX 313, United States Reclamation Service, Project History Rio Grande Project Year 1921, at 6-7 (1921); NM-EX 106, Kryloff Rep. at 23.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-106: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, undisputed.	Apportionment page 3; Apportionment page 33; Apportionment page 39	N/A
15	Apportionment No. 13	Upon completion of the major storage and diversion works for the Project, Colorado proposed to New Mexico legislation authorizing a joint commission between the two states, and New Mexico and Colorado each appointed commissioners in 1923 to negotiate an interstate compact regarding development upstream of Elephant Butte Reservoir.	See NM-EX 111, Miltenberger Rep. at 11; NM-EX 112, Stevens Rep. at 29.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: <i>See</i> General objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Apportionment page 3	N/A
16	Apportionment No. 14	After the first meeting of the Colorado and New Mexico commissioners in 1924, Texas petitioned the Secretary of Commerce, who served as the federal representative, to “accord[] [to the Texas] the same representation upon that Commission which is accorded to the States of New Mexico and Colorado.”	See NM-EX 314, Letter from Pat M. Neff, Governor, State of Texas, to Herbert Hoover, Secretary of Commerce (Sept. 20, 1924); NM-EX 111, Miltenberger Rep. at 12.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, undisputed.	Apportionment page 3	N/A

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17	Apportionment No. 15	The New Mexico Compact Commissioner supported the inclusion of Texas in further compact negotiations. He wrote the New Mexico Governor that the exclusion Texas “assumed” that Reclamation would “protect[]” the rights of the Project in negotiations, but this assumption proved false because “the Reclamation Service apparently decided to take no action whatever looking to the presentation of the rights of the Rio Grande Project either as to lands in New Mexico or Texas, although it was expected that this would be done.”	See NM-EX 315, Letter from J.O. Seth, Commissioner, State of New Mexico, to A.T. Hannett, Governor, State of New Mexico, at 3 (Feb. 20, 1925).	NO	<b>From TX's 12/22/20 Filings:</b> The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, disputed. This paragraph is factually incorrect. The assumption expressed was not Texas’s. In his February 20, 1925 letter to Governor A.T. Hannett in February 1925, New Mexico Compact Commissioner J.O. Seth noted that “Chapter 112 of the Session Laws of 1923 makes no provision whatever for according Texas the right of representation on the Commission.” This law was New Mexico’s own, authorizing compact negotiations with Colorado. The New Mexico Commissioner wrote to Hannett: The omission of the State of Texas from Chapter 112 of the Session laws of 1923 can be accounted for only on the theory that the Legislature assumed that the only lands in Texas that would be affected by any Compact or Agreement are those lying above Fort Quitman and within the Rio Grande Project of the United States Reclamation Service and that all rights to the waters of the Rio Grande held by these lands would be protected by the Reclamation Service. The full quotation, read in context, indicates that Commissioner Seth presumed the New Mexico State Legislature believed that Reclamation would safeguard Texas’s Project water supply. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 17.	Apportionment page 3; Apportionment page 40	N/A
18	Apportionment No. 16	Compact negotiations resumed in 1928 following the appointment of a Texas commissioner. Those initial negotiations resulted in a temporary compact in February 1929.	See NM-EX 111, Miltenberger Rep. at 13; NM-EX 112, Stevens Rep. at 29, 35, 40; NM-EX 316, Rio Grande Compact Commission, First Annual Report of the Rio Grande Compact Commission, 1- 10 (1931).	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Apportionment page 3; Apportionment page 40	Opp. to US - page 40
19	N/A	During the negotiations leading to the 1929 temporary compact, New Mexico represented the potentially opposing interests of water users in the State below Elephant Butte Reservoir and those of upstream users in the Middle Rio Grande Conservancy District (“MRGCD”). New Mexico took the position that fostering development in the MRGCD helped both sets of users, since it permitted development of acreage in the Middle Valley through the drainage of lands; downstream water users in both New Mexico and Texas accepted and agreed with engineering studies showing that MRGCD development would better regulate flows into the Elephant Butte Reservoir as well as augment volumes.	See NM-EX 011, Stevens 2d Decl. at ¶¶ 6-8; NM-EX 112, Stevens Rep. at 34-35; see also, e.g., NM-EX 340, E.P. Osgood, Report on Water Supply Irrigation and Drainage in the San Luis Basin of the Rio Grande, Appx. D at ¶ 1 (1928).	<b>Yes. See NM Response to TX at:</b>  <b>- page 6</b>	NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objection, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. There is nothing in the cited evidence that the production of these reports necessarily constituted “accept[ance] and agree[ment]” by “downstream water users in both New Mexico and Texas . . . that MRGCD development would better regulate flows into the Elephant Butte Reservoir as well as augment volumes.” New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
20	N/A	During these negotiations in the 1920s, Texas’ apparent goal was to permit future additional developments throughout the basin.	See NM-EX 011, Stevens 2d Decl. at ¶ 12; NM-EX 340, E.P. Osgood, Report on Water Supply Irrigation and Drainage in the San Luis Basin of the Rio Grande, Appx. D at ¶ 12 (1928).	NO		New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
21	N/A	The 1929 temporary compact contained explicit language to freeze depletions by preventing any development that would “impair” flows.	NM-EX 316, Rio Grande Compact Commission, First Annual Report of the Rio Grande Compact Commission, 1-10 (1931) (containing the temporary compact); NM-EX 011, Stevens 2d Decl. at ¶ 22.	<b>Yes. See NM Response to TX at:</b>  <b>- page 50</b>		Undisputed.	N/A	Opp. to US - page 40
22	Apportionment No. 17	In December 1935, the Rio Grande Compact Committee met to continue negotiations. At that meeting, officials from the National Resources Committee presented a proposal for a comprehensive study of the Rio Grande in order to facilitate an agreement.	See NM-EX 317, Proceedings of the Rio Grande Compact Commission held in Santa Fe, New Mexico December 2- 3, 1935, at 5-7 (1935); NM-EX 112, Stevens Rep. at 55.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. This paragraph excludes context essential to understanding how the resulting “comprehensive study” – the Rio Grande Joint Investigation (as referenced in paragraph 18 of New Mexico’s Motion for Partial Summary Judgment on Compact Apportionment) – was framed. The proposal by the National Resources Committee (NRC) resulted from an NRC Board of Review’s assessment that the “water resources of the Rio Grande were fully appropriated,” and that New Mexico’s Middle Rio Grande Conservancy District’s project and other proposed projects in New Mexico and Colorado above Elephant Butte threatened the Rio Grande Project. Miltenberger Declaration paragraphs 12-16 addresses this context. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 14.	Apportionment page 3-4	N/A



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23	Apportionment No. 18	This proposed comprehensive study became the Rio Grande Joint Investigation [“RGJI”]. According to the authors, the “prime purpose” of the investigation was “to determine the basic facts needed in arriving at an accord” among the states “on an allocation and use of Rio Grande waters in the future development of the upper basin.”	NM-EX 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, 10-11 (1937); NM-EX 112, Stevens Rep. at 62.	<b>Yes.</b> See NM Response to TX at:  <b>- page 7</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, undisputed.	Apportionment page 4	Opp. to US - page 21
	Apportionment No. 19	One category of required information was accurate data concerning existing diversions, including those of the Project. The Joint Investigation Report collected available data to prepare and present a comprehensive analysis of actual diversions, including diversions between Elephant Butte Reservoir and Fort Quitman, Texas, for the period 1930-36. The Joint Investigation Report also catalogued Project Acreage, including lands for “Cities, Towns, and Villages.”	See NM-EX 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, 11, at 14-16 (1937); NM-EX 112, Stevens Rep. at 64.	<b>Yes.</b> See NM Response to TX at:  <b>- page 6, 7</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. This paragraph is misleading. Diversions were a category of information in the Joint Investigation Report (or “JIR,” NM-EX 318), but those diversions were not limited to the waters that might be considered as derived solely from reservoir releases. The JIR noted that “return flow” from drains constituted 50 percent of the diversions within the Rio Grande Project, which New Mexico’s citation omits. Miltenberger Declaration paragraph 35 likewise notes the importance the JIR placed on return flows. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 15.	Apportionment page 4	N/A
25	N/A	Texas objected to any rigorous groundwater investigation below Elephant Butte Reservoir as part of the RGJI.	See NM-EX 011, Stevens 2d Decl. at ¶ 31; NM-EX 113, Stevens Reb. Rep. at 6-7.	<b>NO</b>	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp. to US - page 21
25	N/A	Texas took the position that significant groundwater investigation was unnecessary because “groundwater supplies along the Rio Grande are of little importance in relation to the total supply.”	NM-EX 345, Letter from Raymond A. Hill, Engineer Advisor, State of Texas, to Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas (Jan. 27, 1936); see also NM-EX 346, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to National Resources Committee (Feb. 1, 1936).	<b>NO</b>		New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp. to US - page 21
25	N/A	As such, the Rio Grande Joint Investigation involved little study of groundwater resources below Elephant Butte Reservoir and drew no conclusions regarding groundwater below Elephant Butte.	NM-EX 112, Stevens Rep. at 56-57; NM-EX 318, Stevens Reb. Rep. at 12-13; NM-EX 011, Stevens 2d Decl. at ¶ 31; NM-EX, 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, at 62 (1937).	<b>NO</b>	NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp. to US - page 21
25	N/A	What little treatment the RGJI report does devote to groundwater below Elephant Butte is concerned with whether the drains were sufficient to lower the water table and prevent seeped lands.	NM-EX 112, Stevens Rep. 64; e.g., See NM-EX 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, at 62 (1937).	<b>NO</b>	NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp. to US - page 21
26	N/A	The RGJI found that return flows were an important part of Project Supply. The report states that total measured return flows was 50 percent of the average of total net diversions in the same period.”	NM-EX 38, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, at 13 (1937). T	<b>Yes.</b> See NM Response to TX at:  <b>- page 16, 36, 58</b>	n/a	The fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The cited supporting evidence is merely a quote from the Rio Grande Joint Investigation and does not materially address a specific fact alleged in Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
26	N/A	his means that the amount of total annual drain flow, throughout the Project and throughout the calendar year, is equal to approximately 50% of the amount of water diverted at Project headings.	NM-EX 100, Barroll Rep. at 14-15, Appx. C, C-4-8; see also NM-EX 006, Barroll 2d Decl. at ¶ 48.	<b>Yes.</b> See NM Response to TX at:  <b>Opp. to Texas</b> <b>- page 16, 36, 58</b>	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	The fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The cited supporting evidence regarding Project drain flow does not address specific facts alleged in Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A

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27	Apportionment No. 20	In entering negotiations, New Mexico stressed that for it to agree, the final compact needed to provide that “[a]ll existing rights to the use of water in the Rio Grande Basin in New Mexico shall be recognized as having the right to an adequate supply of water from said river system.” This position was important to New Mexico, in part, because the surface water in the Lower Rio Grande in New Mexico was fully appropriated and New Mexico expected the final compact to protect those existing rights.	See NM-EX 319, Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held in Santa Fe, New Mexico, September 27, to October 1, 1937, at 12-13 (1937); NM-EX 111, Miltenberger Rep. at 25; NM-EX 112, Stevens Rep. at 65; NM-EX 005, Stevens Decl. at ¶ 8; NM-EX 002, D’Antonio Decl. at ¶ 9.	<b>Yes. See NM Response to TX at:</b>  <b>- page 6, 7</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph is misleading. According to the cited pages of the primary-source document – the September 27 to October 1, 1937 Rio Grande Compact Commission proceedings, NM-EX 319 – New Mexico expressed it “was willing to negotiate” for a compact on the basis of several “minimum requirements” (the fourth of which is the quoted statement), and not that the final compact had to possess all these elements for the state to consummate a Compact with Colorado and Texas, as this paragraph implies. The historical record further indicates that the Compact ultimately privileged uses over rights in the Upper Rio Grande Basin, and that New Mexico bargained for water uses above San Marcial and below the Colorado-New Mexico state line, while Texas bargained for water use below San Marcial. Miltenberger Declaration paragraphs 20-26 discuss the privileging of uses over rights, TX_MSJ_001585; and Miltenberger Declaration paragraphs 8, 24, 26, and 37 specifically address what New Mexico and Texas bargained for. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 16, 49.	Apportionment page 4; Apportionment page 37; Apportionment page 38	N/A
28	N/A	With regard to water use below Elephant Butte, New Mexico’s negotiation position sought to protect the Project as a unit, ensuring that it received a stable supply necessary to water all of the lands within the New Mexico portion of the Project, while simultaneously ensuring that the reservoir’s agreed-upon “normal release” figure was not higher than was fair for the State’s upstream users.	See NM-EX 011, Stevens 2d Decl. at ¶¶ 9-10, 15-20, 26-28; NM-EX 112, Stevens Rep. at 34-35, 66-69; see, e.g., Letter from Thomas M. McClure, State Engineer, State of New Mexico, to S.O. Harper, Chairman, Rio Grande Compact Commission (Jan 25, 1938) (produced at TX_MSJ_005303); E.B. Debler et al., Committee of Engineering Advisers, Rio Grande Compact Commission, Report to the Rio Grande Compact Commission by the Engineer Advisers on New Mexico Objections to Their Report of Dec. 27, 1937 (Mar. 4, 1938 (produced at TX_MSJ_005311).	<b>Yes. See NM Response to TX at:</b>  <b>- page 6</b>	NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The cited supporting evidence does not support the fact asserted in the paragraph. None of the primary-source documents cited indicate that New Mexico sought to balance interested or water needs within the state by restricting the "normal release" figure or that New Mexico worked to protect the Project. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp. to US - page 21, 22
29	Apportionment No. 21	The Engineer Advisors for the three states used the [RGJI] to prepare a Report of Committee of Engineers to the Rio Grande Compact Commissions, dated December 27, 1937. The express “general purpose” of this report was to recommend apportionment among three divisions of the Rio Grande—the San Luis Valley, the “Middle Rio Grande from Lobatos to Elephant Butte Reservoir,” and the Project from Elephant Butte Reservoir to Fort Quitman, Texas—according to a “general policy” that “present uses of water in each of the three States must be protected in formulation of the Compact.”	See NM-EX 322, Letter from E.B. Debler, et al., Committee of Engineer Advisors, Rio Grande Compact Commission, to Rio Grande Compact Commission (Dec. 27, 1937); NM-EX 111, Miltenberger Rep. at 29; NM-EX 112, Stevens Rep. at 67-68.	<b>Yes. See NM Response to TX at:</b>  <b>- page 6</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. This paragraph is misleading in that the source documents provide additional factual context that New Mexico excluded. The facts presented in this paragraph are incomplete and assert an incomplete understanding of the Committee of Engineers’ December 27, 1937 Report. NM-EX-322. As stated on the first page of the report (after the title page), the “general policy” was expressed by the Compact Commissioners themselves, and the engineers “avoided discussion of the relative rights of the water users in the three states.” Miltenberger Declaration paragraphs 20-26 discuss the privileging of uses over rights in the development of the Compact and the Committee of Engineers’ December 27, 1937 Report. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 17.	Apportionment page 4; Apportionment page 31; Apportionment page 38; Apportionment page 40	Opp. to US - page 21
30	Apportionment No. 22	The Committee of Engineers initially recommended a “normal release” from Elephant Butte Reservoir of 800,000 acre-feet per annum.	See NM-EX 322, Letter from E.B. Debler, et al., Committee of Engineer Advisors, Rio Grande Compact Commission, to Rio Grande Compact Commission (Dec. 27, 1937); NM-EX 112, Stevens. Rep. at 67-68.	<b>NO</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, undisputed.	Apportionment page 4; Apportionment page 31; Apportionment page 38; Apportionment page 38; Apportionment page 40	N/A

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31	Apportionment No. 23	Following negotiations, the Committee of Engineers revised its recommendation to provide for a normal release from the Reservoir of 790,000 acre-feet per year to meet the irrigation demands of Project lands in New Mexico and Texas and to make the 1906 treaty delivery to Mexico.	See NM-EX 325, Letter from Thomas M. McClure, State Engineer, State of New Mexico, to S.O. Harper, Chairman, Rio Grande Compact Commission (Jan. 25, 1938), in Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held at Santa Fe, New Mexico, March 3rd to March 18th, inc. 1938, at CO-006216 (1938); NM-EX 325, Letter from E.B. Debler, et al., Committee of Engineer Advisors, Rio Grande Compact Commission, to Rio Grande Compact Commission (Mar. 9, 1938), in Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held at Santa Fe, New Mexico, March 3rd to March 18th, inc. 1938, at CO-006226-33 (1938); NM-EX 112, Stevens Rep. at 68-70; NM-EX 111, Miltenberger Rep. at 33, 37-39.	Yes. See NM Response to TX at:  - page 14,19	From TX's 12/22/20 Filings: NM-EX-112: See General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-111: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is misleading in that the source documents provide additional factual context that New Mexico excluded. The facts presented in this paragraph are incomplete and assert an incomplete understanding of the reasons for the revision. The Committee of Engineers (or Engineering Advisors) revised the normal release figure downward from 800,000 acre-feet to 790,000 acre-feet only after protests made by the Middle Rio Grande Conservancy District's consulting engineer H.C. Neuffer. New Mexico State Engineer and Compact Commissioner Thomas McClure supported Neuffer, even though McClure's engineering advisor John Bliss had accepted the 800,000 acre-feet figure for which Texas had advocated and which the Committee of Engineers had recommended in December 1937. Miltenberger Declaration paragraphs 35-38 discuss this change. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 18.	Apportionment page 5; Apportionment page 31; Apportionment page 38; Apportionment page 40	N/A
32	Apportionment No. 24	On March 18, 1938, the members of the Rio Grande Compact Commission ("RGCC") each executed the final Rio Grande Compact. Congress gave its approval to the Rio Grande Compact on May 31, 1939.	See NM-EX 325, Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held at Santa Fe, New Mexico, March 3rd to March 18th, inc. 1938, 34-35 (1938); An Act Giving Consent and Approval of Congress to the Rio Grande Compact Signed at Santa Fe, New Mexico, on March 18, 1938, Pub. Law No. 76-95, 53 Stat. 785 (1939).	NO	From TX's 12/22/20 Filings: Pub. Law No. 76-95, 53 Stat. 785 (1939): The cited statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	Apportionment page 5; Apportionment page 31; Apportionment page 40	N/A
33	N/A	The historical record contains no evidence that the negotiators expressly addressed groundwater development.	See NM-EX 112, Stevens Rep. 11-12, ¶ 6; NM-EX 240, Kryloff Dep. (Aug. 6, 2020) 57:1-10, 118:10-119:13; NM-EX 241, Miltenberger Dep. (June 8, 2020) 99:8- 101:22, 103:13-24, 105:9-106:23.	NO	NM-EX-112: See General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-240, 241: See General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>		N/A
34	Apportionment No. 25	The preamble of the Rio Grande Compact of 1983 [{"Rio Grande Compact" or "Compact"}] states: "The State of Colorado, the State of New Mexico, and the State of Texas, desiring to remove all causes of present and future controversy among these States and between citizens of one of these States and citizens of another State with respect to the use of the waters of the Rio Grande above Fort Quitman, Texas, and being moved by considerations of interstate comity, and for the purpose of effecting an equitable apportionment of such waters, have resolved to conclude a Compact for the attainment of these purposes . . . ."	NM-EX 330, Compact.	Yes. See NM Response to TX at:  - page 11	From TX's 12/22/20 Filings: N/A	From TX's 12/22/20 Filings: Disputed only as follows: "1983," as set forth in the first sentence, is understood by Texas to be "1938."	Apportionment page 5	N/A
35	N/A	Article I(c) of the Compact defines the term "Rio Grande Basin" to mean "all of the territory drained by the Rio Grande and its tributaries in Colorado, in New Mexico, and in Texas above Fort Quitman, including the Closed Basin in Colorado."	NM-EX 330, Compact at Art. I(c). See NM-EX 008, Lopez 2d Decl. at ¶ 5.	NO	NM-EX-008: See General Objection #2; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
36	Apportionment No. 26; similar language in Full Supply No. 6	Article I, Paragraph (k) of the Compact defines "Project Storage" as "the combined capacity of Elephant Butte Reservoir and all other reservoirs actually available for the storage of usable water below Elephant Butte and above the first diversion to lands of the Rio Grande project, but not more than a total of 2,638,860 acre-feet."	NM-EX 330, Compact at Art. I(k).	NO	From TX's 12/22/20 Filings: N/A	From TX's 12/22/20 Filings: Undisputed.	Apportionment page 5; Full Supply page 3	N/A

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37	Apportionment No. 27	The limit on Project Storage within the Compact accords with what was considered the maximum capacity of Elephant Butte Reservoir.	See NM-EX 107, Lopez Rep. at 15.	Yes. See NM Response to TX at: - page 56, 57	From TX's 12/22/20 Filings: NM-EX-107: See General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The Expert Report of Estevan R. Lopez, P.E. at the page cited in this paragraph, page 15, provides no evidence that the figure given for “Project Storage within the Compact” was considered the “maximum capacity of Elephant Butte Reservoir.” NM-EX 107. Miltenerberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 19.	Apportionment page 5	N/A
38	Apportionment No. 28; similar language in Full Supply No. 6	The Compact contemplates that usable water will be released from storage to meet irrigation demands. Article I, Paragraph (l) of the Compact defines “Usable Water” as “all water, exclusive of credit water, which is in project storage and which is available for release in accordance with irrigation demands, including deliveries to Mexico.”	NM-EX 330, Compact at Art. I(l); NM-EX 107, Lopez Rep. at 16.	Yes. See NM Response to TX at: - page 13, 56	From TX's 12/22/20 Filings: NM-EX-107: See General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	Apportionment page 5; Full Supply page 3	N/A
39	Apportionment No. 29	Article I, Paragraph (o) of the Compact defines “Actual Release” as “the amount of usable water released in any calendar year from the lowest reservoir comprising project storage.”	NM- EX 330, Compact at Art. I(o).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: N/A	From TX's 12/22/20 Filings: Undisputed.	Apportionment page 6	N/A
40	Apportionment No. 30	Article I, Paragraph (p) of the Compact defines “Actual Spill” as “all water which is actually spilled from Elephant Butte Reservoir, or is released therefrom for flood control, in excess of the current demand on project storage and which does not become usable water by storage in another reservoir; provided, that actual spill of usable water cannot occur until all credit water shall have been spilled.”	NM-EX 330, Compact at Art. I(p).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: N/A	From TX's 12/22/20 Filings: Undisputed.	Apportionment page 6	N/A
41	Apportionment No. 31	Article I, Paragraph (q) of the Compact defines “Hypothetical Spill” as “the time in any year at which usable water would have spilled from project storage if 790,000 acre-feet has been released therefrom at rates proportion to the actual release in every year from the starting date to the end of the year in which hypothetical spill occurs.”	NM-EX 330, Compact at Art. I(q).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: N/A	From TX's 12/22/20 Filings: Undisputed.	Apportionment page 6	N/A
42	Apportionment No. 32	Article II of the Compact specifies that stream gaging stations be established at specific locations in the Rio Grande Basin for the purposes of Compact accounting. The lowest required stream gage under Article II is just below Caballo Reservoir.	See NM-EX 330, Compact at Art. II; NM-EX 107, Lopez Rep. at 18. See also NM-EX 008, Lopez 2d Decl. at ¶ 6.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-107: See General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. Fed. R. Evid. 704: The statement includes impermissible legal conclusions. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The statement mischaracterizes Article II of the Compact. Article II does not include the following language: 1. “for the purposes of Compact accounting;” 2. “The lowest required stream gage under Article II is just below Caballo Reservoir.” Miltenerberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 19.	Apportionment page 6; Apportionment page 32	N/A
43	N/A	Article III of the Compact specifies two delivery schedules for Colorado: one for the Conejos River and one for the Rio Grande exclusive of the Conejos River.	NM-EX 330, Compact at Art. III; see also NM-EX 008, Lopez 2d Decl. at ¶ 7.	Yes. See NM Response to TX at: - page 56	NM-EX-330: The Compact provision does not constitute factual evidence as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objection, undisputed.	N/A	N/A



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44	Apportionment No. 33	Article IV of the Compact defines New Mexico’s obligation to deliver water from the Rio Grande to San Marcial based upon nine (9) non-summer months of river flows. The delivery obligation at San Marcial is defined by a mathematical relationship corresponding to recorded flow at the Otowi gage during those months. The Otowi gage [is] located in New Mexico about 100 miles south of the Colorado border. The San Marcial gage was located just upstream of Elephant Butte Reservoir.	See NM-EX 330, Compact at Art. IV; NM-EX 107, Lopez Rep. at 20.	<b>Yes. See NM Response to TX at: - page 19, 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. Although the content of Article IV of the Compact and the relationship between the Otowi and San Marcial gages is correctly stated in this paragraph, the paragraph’s presented facts are incomplete. NM-EX-330. The paragraph does not recognize the temporal basis for the delivery schedule, which is important context for understanding what those flows truly are and how the Compact works. Miltenberger Declaration paragraphs 22-24 discuss the temporal basis for the delivery schedule. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 20.	Apportionment page 6	N/A
45	Apportionment No. 34	In 1948, the RGCC changed New Mexico’s delivery schedule under Article IV of the Compact to require deliveries at Elephant Butte Reservoir, rather than San Marcial, and removed the Article II gaging stations at San Marcial and San Acacia.	See NM-EX 331, Rio Grande Compact Commission, Tenth Annual Report of the Rio Grande Compact Commission, at 17-18 (1948); NM-EX 107, Lopez Rep. at 18-22.	<b>Yes. See NM Response to TX at: - page 19, 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Apportionment page 6	N/A
46	N/A	The 1948 amendment also removed a requirement from Article IV to adjust the scheduled delivery amounts based on depletion of tributary runoff between Otowi Bridge and San Marcial during July, August, and September by works constructed after 1937.	See NM-EX 008, Lopez 2d Decl. at ¶ 34; see also See NM-EX 331, Rio Grande Compact Commission, Tenth Annual Report of the Rio Grande Compact Commission, at 17-18 (1948); NM-EX 107, Lopez Rep. at 17-18.	<b>Yes. See NM Response to TX at: - page 19, 56</b>	NM-EX-008: See General Objection #2; Fed. R. Evid. 801(c), hearsay; NM-EX-107: <i>See</i> General Objection #7 and #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, undisputed.	N/A	N/A
47	Apportionment No. 35	Article VI of the Compact defines procedures to determine the annual credits and debits for Colorado and New Mexico. Of note, Article VI permits Colorado and New Mexico to authorize releases of Credit Water to avoid spill in excess of downstream demand and permits such releases to be included in the accounting of an Actual Spill.	See NM-EX 330, Compact at Art. VI; NM- EX 107, Lopez Rep. at 22-23.	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, undisputed.	Apportionment page 6	N/A
48	N/A	The Compact separately defines “Annual Debits,” “Annual Credits,” “Accrued Debits,” and “Accrued Credits.” These distinctions indicate that each state’s credit or debit balance is subject to annual accounting.	See NM-EX 330, Compact at Art. I(g)-(j), VI; NM-EX 008, Lopez 2d Decl. at ¶ 12; NM-EX 107, Lopez Rep. at 16-17.	<b>Yes. See NM Response to TX at: - page 56</b>	NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objection, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and supporting evidence merely include New Mexico and Mr. Lopez's opinion on the meaning of Compact terms. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
49	Apportionment No. 36	Article VII of the Compact prohibits any increase in storage by either New Mexico or Colorado in reservoirs constructed after 1929 if the volume of Usable Water in Project Storage is less than 400,000 acre-feet. This threshold value decreases if the aggregate releases from Project [S]torage have averaged more than 790,000 acre-feet from the beginning of the calendar year following the effective date of the Compact, or from the beginning of the calendar year following an Actual Spill, before the storage limitation takes effect. Further, the article permits that either Colorado or New Mexico may offer to relinquish accrued Credit Water to Texas, and Texas may accept such an offer at its discretion. If New Mexico and Texas agree on a relinquishment, the relinquished Credit Water becomes Usable Water and is available for use on lands in both New Mexico and Texas.	See NM-EX 330, Compact at Art. VII; NM-EX 107, Lopez Rep. at 23.	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	<b>From TX's 12/22/20 Filings:</b> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 21.	Apportionment page 6	N/A

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50	N/A	If Texas agrees to New Mexico's or Colorado's offer to relinquish Credit Water, the state that has so relinquished has a right to store a like amount of water in the upstream post-1929 reservoirs. Texas has sole authority to accept relinquishment of Accrued Credits. However, neither Colorado nor New Mexico is obligated to offer such relinquishment. In other words, Texas cannot compel such relinquishment.	See NM-EX 330, Compact at Art. VII; NM-EX 008, Lopez 2d Decl. at ¶¶ 14, 15; NM-EX 107, Lopez Rep. at 23.	Yes. See NM Response to TX at: - page 56	NM-EX-008, NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objection, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and supporting evidence merely include New Mexico and Mr. Lopez's opinion on the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
51	Full Supply No. 6	The Compact provides that "a normal release ... from Project Storage" is 790,000 acre- feet.	NM-EX 001, Barroll Decl. at ¶ 16; NM-EX 330, Compact at Art. VIII; see also NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 17 (Sept. 30, 2016) (describing a full allocation release to be 790,000 acre-feet per year as provided in the Compact).	Yes. See NM Response to TX at: - page 56	<b>From TX's 12/22/20 Filings:</b> NM-EX 529: <i>See</i> General Objection #8. Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); <i>see also</i> First Interim Report of the Special Master, 194-95 (Feb. 9, 2017); Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); Reply Brief for the United States on Exceptions by the States of New Mexico and Colorado to the First Interim Report of the Special Master, 18 (July 2017): Language in a legal brief prepared by the party's attorneys supporting a motion that is not based on evidence, do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Full supply page 3	N/A
52	Apportionment No. 37	Article VIII of the Compact permits New Mexico to demand of Colorado, and Texas to demand that Colorado and New Mexico, in January, release of water then held in storage from post-1929 reservoirs upstream of Elephant Butte to the amount of any accrued debits of Colorado and New Mexico, respectively, as necessary to help bring the amount of water in Project Storage up to 600,000 acre feet by March first. The purpose of this provision is to bring the quantity of Usable Water in Project Storage to 600,000 acre-feet by March first and to maintain this quantity until April thirtieth to allow for a normal release of 790,000 acre feet in that year.	See NM-EX 330, Compact at Art. VIII.	Yes. See NM Response to TX at: - page 21, 56	<b>From TX's 12/22/20 Filings:</b>	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. Although the content of Article VIII as presented is correct, this paragraph does not acknowledge the second-order purpose of Article VIII: to protect the Project, and thus the water supply to Texas. Miltenberger Declaration paragraph 24 and paragraph 40 address this. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 22.	Apportionment page 7; Apportionment page 31	N/A
53	N/A	The text and structure of the Compact indicate that the Project, Compact, and Downstream Contracts are inextricably intertwined. The Compact incorporates the definition of Project Storage into a number of provisions.	See NM-EX 330, Compact, Articles I(l)-(q), VI, VII, and VIII; NM- EX 008, Lopez 2d Decl. at ¶ 4; NM-EX 107, Lopez Rep. at 15-25.	Yes. See NM Response to TX at: - page 16, 56	NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The text and structure of the Compact recognizes the Project's existence, and "Project Storage" is referenced in the Compact. However, there is no reference to the "Downstream Contracts" in the Compact. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A

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54	N/A	An intent to protect the Project is evident in the delivery obligations in Articles III and IV. These constraints primarily benefit the Project. The schedules in Articles III and IV of the Compact were derived from streamflow data that was available in 1938. This assured that existing uses as of 1938 in Colorado, in New Mexico above Elephant Butte Reservoir and in the Rio Grande Project area below Elephant Butte were all protected while allowing Compact operation in variable hydrology. Further, both Colorado and New Mexico were allowed to develop additional water resources after 1938 subject to certain constraints that are specified in Articles VI, VII and VIII. Notably, those constraints do not preclude additional depletions but do constrain operations of post-1929 upstream reservoirs depending on the conditions at Elephant Butte Reservoir. To the extent that those Articles protect Project Supply during relatively dry periods, those protections benefit New Mexico below Elephant Butte, Texas, and Mexico.	See NM-EX 008, Lopez 2d Decl. at ¶¶ 8, 11, 18; see also NM-EX 330, Compact, at Arts. III-IV; NM-EX 107, Lopez Rep. at 22-26.	<b>Yes. See NM Response to TX at: - page 56</b>	NM-EX-008, NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and evidence cited in support are used to support New Mexico's argument that pumping in Texas impacts "New Mexico's apportionment." Such an argument may address New Mexico's counterclaims against Texas, but does not address Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
55	N/A	In its protection of preexisting uses as of 1938, the Compact protects certain pre-Compact rights in New Mexico that are not part of the Project.	See NM-EX 008, Lopez 2d Decl. at ¶ 30; NM-EX 237, Rule 30(b)(6) Dep. of the State of New Mexico by and through Lopez (Sept. 18, 2020) at 83:3-85:16.	<b>Yes. See NM Response to TX at: - page 6, 56</b>	NM-EX-008: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions. NM-EX-237: <i>See</i> General Objection #8.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. The stated fact and evidence cited in support are used to support New Mexico's argument that pumping in Texas impacts "New Mexico's apportionment" ( <i>see</i> NM Response at 56). Such an argument may address New Mexico's counterclaims against Texas, but does not address Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact and supporting evidence are non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
56	N/A	There is not any indication in the Compact that the states intended to adopt a 1938 Condition. First, the plain text of the Compact does not refer to any 1938 Condition, in contrast to other interstate water compacts of the era, such as the Pecos River Compact, NMSA 1978 § 72- 15- 19 (1947). Second, the Downstream Contracts similarly do not refer to any 1938 condition. Third, the Downstream Contracts do not define a total volume of water to which the Districts are entitled.	See NM-EX 008, Lopez 2d Decl. at ¶¶ 24-25; see also NM-EX 330, Compact; NM-EX 107, Lopez Rep. at 8, 26-27, 41-43; NM-EX 108, Lopez Reb. Rep. at 6-9.	<b>Yes. See NM Response to TX at: - page 40, 41, 56, 58</b>	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Partial Summary Judgment does not argue that the plain text of the Rio Grande Compact states that there is a 1938 condition. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
57	N/A	In effect, Article IV deliveries are deliveries into the Project as a whole and benefit New Mexico, Texas, and Mexico. Nothing in Article IV indicates that the Compact vests in Texas control, dominion, or ownership in the water delivered to Elephant Butte Reservoir. Rather, the Compact provides that New Mexico and Texas may each share in releases of “Usable Water,” after satisfying the delivery to Mexico pursuant to the 1906 Treaty, to meet irrigation demands in accord with the ordinary operation of the Project and the Downstream Contracts.	See NM-EX 008, Lopez 2d Decl. at ¶¶ 12, 17, 40; NM-EX 107, Lopez Rep. at 8, 20-22, 26-27; see also NM-EX 012, Sullivan Decl. at ¶ 23 (describing a number of reasons why portions of the water delivered into Elephant Butte Reservoir cannot be delivered to Texas).	<b>Yes. See NM Response to TX at: - page 13, 18, 19, 56</b>	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Partial Summary Judgment references Article IV of the Rio Grande Compact, but New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
58	N/A	Although the drafters certainly could have done so, the Compact does not define a specific delivery to the New Mexico-Texas state line. Rather, deliveries to Texas and its apportionment are effectuated through the operation of the Rio Grande Project as a single unit that makes Project Supply available equally (i.e., on an acre-foot per annum/acre basis) to all authorized Project lands, whether in New Mexico or in Texas.	See NM-EX 008, Lopez 2d Decl. at ¶¶ 7, 24; see also NM- EX 330, Compact; NM-EX 107, Lopez Rep. at 19-22, 26-27; NM-EX 108, Lopez Reb. Rep. at 6- 9, Appx. 1.	<b>Yes. See NM Response to TX at: - page 13, 18, 19, 56</b>	NM-EX-008, 107, 108 <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Partial Summary Judgment discusses the Compact terms relating to New Mexico's required delivery of water to Texas. New Mexico's stated fact however amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	Opp. to US - page 38 - page 39 - page 62



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59	N/A	The absence of gages downstream of the Caballo Reservoir gage in Article II of the Compact also indicates that the compacting States had no intention to guarantee a specific state- line delivery to Texas. Texas has not requested any gages “necessary . . . for the carrying out of the [C]ompact” near the state line.	See NM-EX 008, Lopez 2d Decl. at ¶ 36.	<b>Yes. See NM Response to TX at: - page 13, 18, 19, 56</b>	NM-EX-008: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Partial Summary Judgment discusses the Compact terms relating to New Mexico's required delivery of water to Texas. New Mexico's stated fact however amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	Opp. to US - page
60	N/A	The division of rights under Article VII of the Compact, whereby only New Mexico and Colorado may offer relinquishment of credit water and only Texas may accept, reflects three practical concerns: (1) Texas’s sole apportionment under the Compact is entirely below Elephant Butte; (2) Texas is the only Compact party that cannot accrue Credits under the Compact that it could relinquish; and (3) Texas has no post-1929 reservoirs upstream of Elephant Butte within which it could store water.	See NM-EX 008, Lopez 2d Decl. at ¶ 15; NM-EX 107, Lopez Rep. at 23.	<b>Yes. See NM Response to TX at: - page 22, 56</b>	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Partial Summary Judgment discusses the Compact terms relating to New Mexico's required delivery of water to Texas. New Mexico's stated fact however amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. In addition, the Compact does not use the phrase "division of rights" and thus the phrase is irrelevant. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
61	N/A	Article VIII of the Compact reflects New Mexico’s apportionment interest below Elephant Butte Reservoir because it permits New Mexico, independent of Texas, to demand of Colorado a release of water intended to increase Usable Water in Project Storage.	See NM-EX 008, Lopez Decl. at ¶ 16; see also NM-EX 330, Compact at Art. VIII; NM-EX 107, Lopez Rep. at 24-27.	<b>Yes. See NM Response to TX at: - page 56</b>	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms (in this case, Article VIII). New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
62	N/A	The definition of “normal release” in Article VIII was a negotiated amount reflecting the amount of water thought to be needed for Project irrigation purposes in a given year, including deliveries to Mexico under the 1906 Treaty and an unspecified allowance for flushing salts. There is no indication, in the structure of the Compact, that the normal release assumes any specific amount of return flow. Project return flows occur entirely below the Rio Grande below the Caballo Reservoir gage where releases from Project Storage are measured. Moreover, the Compact does not require the Actual Release in a given year to be 790,000 acre-feet/year, permitting variability to address annual changes in conditions.	See NM-EX 008, Lopez 2d Decl. at ¶¶ 19-20; NM-EX 107, Lopez Rep. at 8, 17-18, 26-27.	<b>Yes. See NM Response to TX at: - page 19, 56</b>	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms (in this case, Article VIII). New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
62	N/A	The provisions of Articles VII and VIII do not guarantee that 790,000 acre-feet of Usable Water will be available for a normal release in any given year.	See NM-EX 008, Lopez 2d Decl. at ¶ 21; NM-EX 107, Lopez Rep. at 22-25.	<b>Yes. See NM Response to TX at: - page 19, 56</b>	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms (in this case, Articles VII & VIII). New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A



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63	N/A	To the extent that the Compact negotiators had a nascent understanding of the interactions between groundwater extraction and surface flow, there is no indication in the text that they intended to apportion groundwater below Elephant Butte Reservoir. Initially, the Compact does not make any mention of groundwater. Next, the Compact defines two inflow-outflow schedules above Elephant Butte (Articles III and IV) that effectively require the administration of groundwater use in order to meet delivery obligations at the Colorado state line (Article III) and into Elephant Butte Reservoir (Article IV), but there is no similar mechanism in effect below Elephant Butte Reservoir.	See NM-EX 008, Lopez 2d Decl. at ¶¶ 22-23, 41.	<b>Yes. See NM Response to TX at: - page 56</b>	NM-EX-008: <i>See</i> General Objection #2. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	Opp. to US - page 18 - page 19 - page 30 -page 35 -page 37,38
64	N/A	The Compact indicates that New Mexico's apportionment comprises two parts: a. Colorado's required deliveries under Compact Article III plus inflows between the Colorado-New Mexico state line and Elephant Butte Reservoir less New Mexico's delivery obligation to Elephant Butte under Article IV based on the flow at Otowi gage; and b. 57% of the Project Supply that remains after first having provided for Mexico's allocation under the 1906 Treaty.	NM-EX 008, Lopez 2d Decl. at ¶ 26; see also NM-EX 330, Compact; NM-EX 107, Lopez Rep. at 8, 19-22 and 26-27.	<b>Yes. See NM Response to TX at: - page 14, 56</b>	NM-EX-008, 107: <i>See</i> General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
65	N/A	The Compact indicates that the apportionment to lands in New Mexico below Elephant Butte is to New Mexico. New Mexico would continue to be entitled to its apportionment below Elephant Butte regardless of whether EBID ceased to exist.	See NM-EX 008, Lopez 2d Decl. at ¶ 30; NM-EX 237, Rule 30(b)(6) Dep. of the State of New Mexico by and through Lopez (Sept. 18, 2020) at 83:3-85:16.	<b>Yes. See NM Response to TX at: - page 6, 56</b>	NM-EX-008: <i>See</i> General Objection #2. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions. NM-EX-237: <i>See</i> General Objection #8.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to New Mexico and Mr. Lopez's legal opinion regarding the meaning of Compact terms. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
66	Apportionment No. 38; similar language in Notice No. 1	The historical record indicates that one purpose of the Compact was to protect the operation of the Project.	NM-EX 111, Miltenberger Dep. (June 8, 2020) at 38:8-17, 137:9-138:21; NM-EX 112, Stevens Rep. at 72; NM-EX 005, Stevens Decl. at ¶ 10. See, e.g., NM-EX 319, Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held in Santa Fe, New Mexico, September 27, to October 1, 1937, at 12-13 (1937).	<b>Yes. See NM Response to TX at: - page 6, 23, 50, 51 , 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: Exhibit is incorrectly identified. NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-005: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 702 – the statement in the Stevens Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. NM-EX-220 [Miltenberger deposition transcript, not properly cited]: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Apportionment page 7; Apportionment page 39; Apportionment page 40 Notice page 1	N/A
67	Apportionment No. 39	The historical record indicates that another purpose of the Compact was to protect existing rights.	NM-EX 106, Kryloff Dep. (Aug. 6, 2020) at 108:9-109:18; NM-EX 005, Stevens Decl. at ¶ 11. See, e.g., NM-EX 319, Rio Grande Compact Commission, Proceedings of the Meeting of the Rio Grande Compact Commission Held in Santa Fe, New Mexico, September 27, to October 1, 1937, 1at 2-13 (1937); NM-EX 322, Letter from E.B. Debler, et al., Committee of Engineer Advisors, Rio Grande Compact Commission, to Rio Grande Compact Commission (Dec. 27, 1937).	<b>Yes. See NM Response to TX at: - page 6, 23, 50, 51 , 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-215: <i>See</i> General Objection #8. NM-EX-005: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 702: the statement in the Stevens Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph mischaracterizes the historical record. The historical record makes clear that existing uses, circa 1938, not rights were to be protected by the Compact. Miltenberger Declaration paragraphs 20-27 address the privileging of uses over rights in the Compact. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 23.	Apportionment page 7; Apportionment page 34; Apportionment page 38	N/A

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68	N/A	However, there is no historical evidence indicating that the compacting States intended to freeze conditions in the Rio Grande Basin, as they did in the 1929 temporary compact. Rather, the available historical evidence indicates that each state intended to continue developing their supplies within the limits imposed by the protection of existing uses under the Compact.	NM-EX 011, Stevens 2d Decl. at ¶¶ 21, 23-25; NM-EX 008, Lopez 2d Decl. at ¶ 6; NM-EX 112, Stevens Rep. at 56, 68, 81; see, e.g., Letter from S.O. Harper, Chairman, Rio Grande Compact Commission, to Secretary of the Interior (Mar. 26, 1938) (describing the RGJI as a study of all “past, present, and prospective uses of water” in the basin) (produced as TX_MSJ_005338-40); NM-EX 352, Rio Grande Compact Commission, First and Second Annual Reports of the Rio Grande Compact Commission 1939 and 1940, at 15-19 (Feb. 25, 1941) (adopting rules that “permit[] each State to develop its water resources at will, subject only to its obligations to deliver water in accordance with the schedules set forth”); see also, e.g., NM-EX 112, Stevens Rep. at 81 (quoting Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to E.H. Thornton, Jr. (Mar. 23, 1939)).	Yes. See NM Response to TX at: - page 23, 56	NM-EX-008: <i>See</i> General Objection #2. NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact amounts to a conclusory argument that there is no "1938 Condition" associated with the Compact apportionment. New Mexico's stated fact does not materially address Texas's argument on the "1938 Condition." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	Opp. to US - page 40
69	Apportionment No. 40	Prior to negotiation of the Compact, Reclamation administered the Project as a single unit.	NM-EX 111, Miltenberger Dep. (June 8, 2020) at 41:22-42:12; NM-EX 202, Cortez Dep. (July 30, 2020) at 58:6-18; NM-EX 107, Lopez Rep. at 25.	Yes. See NM Response to TX at: - page 23, 56	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: Exhibit is incorrectly identified; Fed. R. Evid. 801(c), hearsay. NM-EX-202: <i>See</i> General Objection #8. [NOTE RICH, I CHANGED THIS FROM #6 TO OBJ #8 NM-EX-107: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-220 [Miltenberger deposition transcript, not properly cited]: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Apportionment page 7; Apportionment page 34; Apportionment page 39; Apportionment page 40	Opp. to US - page 62
70	Apportionment No. 42	In negotiating the Compact, the States understood that all lands within the Project had equal rights to water.	NM-EX 111, Miltenberger Dep. (June 8, 2020) at 44:4-23; NM-EX 328, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938); NM-EX 107, Lopez Rep. at 26-27, 35, 67-68; NM-EX 005, Stevens Decl. at ¶ 11.	Yes. See NM Response to TX at: - page 6, 23, 42, 43, 56	<b>From TX's 12/22/20 Filings:</b> NM-EX-111: Exhibit is incorrectly identified. NM-EX-220 [Miltenberger deposition transcript, not properly cited]: <i>See</i> General Objection #8. NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. NM-EX-005: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 702: the statement in the Stevens Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph is misleading. In the cited Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938), Clayton was referencing contract rights – not appropriative rights. NM-EX 328. Miltenberger Declaration paragraphs 30 and 42-45 discuss the contracts for water delivery for the two Rio Grande Project districts – Elephant Butte Irrigation District (EBID) in New Mexico, and El Paso County Water Improvement District No. 1 (EP #1) in Texas. TX_MSJ_001585. The meaning and intent of the Clayton-Smith letter is addressed more fully in paragraphs 28-37. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 24, 28 - 37.	Apportionment page 7; Apportionment page 30; Apportionment page 34; Apportionment page 39; Apportionment page 40	N/A

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71	Apportionment No. 43	The historical record reflects that the States agreed on 790,000 acre-feet per year as a normal release in the Compact because it was sufficient to satisfy irrigation demands in both New Mexico and Texas, as well as address water quality concerns.	NM-EX 220, Miltenberger Dep. (June 8, 2020) at 146:21-148:1; NM-EX 215, Kryloff Dep. (Aug. 6, 2020) at 55:17-56:25, 89:20- 90:1; NM-EX 106, Kryloff Rep. at 25-26.	<b>Yes. See NM Response to TX at: - page 6, 14, 19, 23 , 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-220: <i>See</i> General Objection #8. NM-EX-215: <i>See</i> General Objection #8. NM-EX-106: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph is misleading. The 790,000 acre-feet release was to serve Project lands in New Mexico and Texas, the 1906 Mexican treaty obligation, and non-Project lands in Texas down to Ft. Quitman, ca. 1938. Miltenberger Declaration paragraphs 29-38 discuss this. TX_MSJ_001585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 25, 49 - 51. Additionally, the cited evidence does not support the asserted statement regarding water quality concerns. NM-EX-106, the Kryloff Report, references that the JIR “incorporated certain modifications to account for salinity control” at page 25. Otherwise, none of the cited evidence mentions “water quality.”	Apportionment page 7; Apportionment page 30; Apportionment page 34; Apportionment page 38;	N/A
72	Apportionment No. 44	The historical record indicates that the Compact relied upon the Project and its allocation and delivery of water in relation to the proportion of Project irrigable lands to provide the basis for the apportionment of Rio Grande waters to users in New Mexico and Texas.	NM-EX 220, Miltenberger Dep. (June 8, 2020) at 40:7-22; NM-EX 107, Lopez Rep. at 67-68.	<b>Yes. See NM Response to TX at: - page 23, 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-220: <i>See</i> General Objection #8. NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph is misleading because the Compact does not rely upon the Project to effectuate any apportionment between New Mexico and Texas below Elephant Butte, as the paragraph implies. Instead, it depends on the Project to see that Project beneficiaries in New Mexico receive water – in other words, protecting the Project as an existing use. Miltenberger Declaration paragraphs 26-46 discuss this. TX_MSJ_1585. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 26, 49 - 51. Additionally, the deposition testimony attributed to Scott Miltenberger is misrepresented by New Mexico. Dr. Miltenberger testified that he agreed with Paragraph 10 of the Texas Complaint when it was read to him, and into the record, by counsel for New Mexico at his deposition. The statement he agreed to was the following: “The Rio Grande Compact did not specifically identify quantitative allocations of water below Elephant Butte Dam as between southern New Mexico and Texas, nor did it articulate a specific state line delivery allocation. Instead, it relied upon the Rio Grande project and its allocation and delivery of water in relation to the proportion of Rio Grande project irrigable lands in southern New Mexico and in Texas to provide the basis of the allocation of Rio Grande waters between Rio Grande project beneficiaries in southern New Mexico and the State of Texas.” NM-EX-220, Miltenberger Dep. (June 8, 2020) 40:7-22 (emphasis added). New Mexico improperly changed the highlighted testimony above, which was a clear statement regarding the Project allocations to Project beneficiaries, to be a “basis for the apportionment of Rio Grande waters to users in New Mexico and Texas.” UMF 44.	Apportionment page 8; Apportionment page 30; Apportionment page 34; Apportionment page 41	N/A
73	N/A	There is no evidence in the historical record that Texas believed it controlled all of the water being delivered into Elephant Butte; instead, Texas relied on Reclamation to administer the Project Supply, including return flows, according to the Downstream Contracts.	NM-EX 011, Stevens 2d Decl. at ¶ 28; NM-EX 112, Stevens Rep. at 74-77.	<b>Yes. See NM Response to TX at: - page 23 , 56</b>	NM-EX 112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. This paragraph is overstated and misleading. The historical record indicates that the water delivered to Elephant Butte was for the benefit of Texas and the quantity of water provided for release in the Compact was the quantity of water for which Texas bargained, subject to other pre-existing uses, namely water for Mexico pursuant to the 1906 Treaty and EBID pursuant to federal contract. <i>See</i> Miltenberger 2d. Decl., paragraphs 32-34 at TX_MSJ_007384-TX_MSJ_007385. The historical record suggested that the recommended “normal release” figure of 800,000 af/y from Elephant Butte in the Committee of Engineers’ report to be for the benefit of Texas. In addition, not only did New Mexico recognize that the water delivered to Elephant Butte was for Texas, Texas’s own representatives understood that the division of water between New Mexico and Texas was made at Elephant Butte, even though the water released served the Mexican treaty obligation and EBID. <i>See Id.</i> at paragraph 31, 49-51, TX_MSJ_007384 and TX_MSJ_007391-TX_MSJ_007392).	N/A	N/A
74	Apportionment No. 45	The historical record confirms that historically Project deliveries were made based upon the ratio between Project acreage in New Mexico and Project acreage in Texas. In other words, under the Compact, the delivery of water through the Project was based on the irrigable acres in each state. Historically that ratio is 57% to New Mexico and 43% to Texas.	NM-EX 220, Miltenberger Dep. (June 8, 2020) at 39:2-40:6, 47:17-48:18.	<b>Yes. See NM Response to TX at: - page 23, 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-220: <i>See</i> General Objection #8. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph mischaracterizes the historical record and Scott Miltenberger’s deposition testimony. The historical record indicates that Project deliveries were generally based on irrigable acreage in the two states in a ratio of 57 percent for Project lands in New Mexico and 43 percent for Project lands in Texas. However, this paragraph does not offer any supporting evidence that deliveries were made in this fashion in every year and that deliveries were always made in accordance with the 57-43 percent ratio. Dr. Miltenberger did not testify that either was the case. Dr. Miltenberger merely replied in the affirmative when asked if he agreed with a portion of Texas’s Complaint that noted this general, historical distribution of Project water deliveries. At least one primary-source document produced by New Mexico in support of its motions in fact suggests that allotments of Project water were not always equal (see paragraph 53 to the Miltenberger Declaration). NM-EX-323. Moreover, there is no language in the Compact requiring deliveries of Project water in this manner, and Dr. Miltenberger did not testify that the Compact directed Project deliveries in any way, which the phrase “under the Compact” in this paragraph implies. NM-EX-330. Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 27, 53.	Apportionment page 8; Apportionment page 33; Apportionment page 34; Apportionment page 41	N/A

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75	Notice No. 13	The understanding of the compacting States was that Reclamation would continue to operate the Project [as a unit].	NM-EX 328, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938) (“Obviously, neither Colorado nor New Mexico could be expected to guarantee any fixed deliveries at the Texas line when the operation of the dam is not within their control but is in the control of an independent agency.”); NM-EX 327, J.H. Bliss, Provisions of the Rio Grande Compact, 1 (Apr. 2, 1938) (“The measurement of the water at San Marcial rather than the New Mexico-Texas line is necessary because the Elephant Butte Project must be operated at as a unit.”); NM-EX 112, Stevens Rep.at 72.	<b>Yes. See NM Response to TX at: - page 23, 53, 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX 112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed regarding the ambiguity of the phrase “in that manner.” To the extent that “in that manner” is referable to #12, the item is disputed.	Notice page 3, 16, 17	Opp. to US - page 40, 41 - page 62
76	Apportionment No. 46	Shortly after the Compact was finalized, Texas Commissioner Frank Clayton explained the way that the Compact divided water below Elephant Butte: [T]he question of the division of the water released from Elephant Butte reservoir is taken care of by contracts between the districts under the Rio Grande Project and the Bureau of Reclamation. These contracts provide that the lands within the Project have equal water rights, and the water is allocated according the areas involved in the two States. By virtue of the contract recently executed, the total areas is ‘frozen’ at the figure representing the acreage now actually in cultivation: approximately 88,000 acres for Elephant Butte Irrigation District, and 67,000 for the El Paso County Water Improvement District No. 1, with a ‘cushion’ of three per cent for each figure.	NM-EX 328, Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938).	<b>Yes. See NM Response to TX at: - page 14, 23, 24, 53, 56</b>	<b>From TX's 12/22/20 Filings:</b>	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph mischaracterizes Frank B. Clayton’s October 4, 1938 letter to Sawnie Smith. NM-EX 328. Although the paragraph accurately quotes Frank Clayton, it pays insufficient attention to the details of the letter and fails to acknowledge the context in which the letter was drafted – both of which are essential to understanding the ideas Mr. Clayton was expressing to Mr. Smith. Miltenberger Declaration paragraphs 31 and 42 discuss the Clayton-Smith letter and additional discussion is provided in the Scott Miltenberger Declaration submitted herewith to clarify further the letter’s meaning. TX_MSJ_001585. The discussion is lengthy, and is incorporated herein by reference. See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 28 - 37.	Apportionment page 8; Apportionment page 39	Opp. to US - page 40, 41 - page 42
76	Apportionment No. 46	The expert historian for the United States agreed that this letter was “an important document” for understanding the way that the Compact divides the water below Elephant Butte.	See Ex 215, Kryloff Dep. (Aug. 6, 2020) at 41:15-20, 41:21-42:9; NM-EX 106, Kryloff Rep. 12; see also NM-EX 220, Miltenberger Dep. (June 8, 2020) at 43:17-44:23.	<b>Yes. See NM Response to TX at: - page 14, 23, 24, 53, 56</b>	NM-EX-215, 220: <i>See</i> General Objection #8. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). NM-EX-106: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Additionally, the deposition testimony attributed to Mr. Kryloff is misrepresented by New Mexico. Mr. Kryloff testified that he agreed that the Clayton letter is “an important document” “for understanding the intent of the parties with regard to allocating water below Elephant Butte.” <i>See</i> Ex 215, Kryloff Dep. (Aug. 6, 2020) 41:15-20 (emphasis added). He did not state, as represented by New Mexico in #46, that the Clayton letter is important “for understanding the way that the Compact divides the water below Elephant Butte.” Further, the Miltenberger testimony cited by New Mexico does not support the stated “fact.”	Apportionment page 8 ; Apportionment page 39	Opp. to US - page 40, 41 - page 42
77	Apportionment No. 47	Similarly, shortly after the Compact was finalized, Texas Commissioner Frank Clayton described the operation of the Compact to the Chairman of the Texas Board of Water Engineers. Commissioner Clayton explained: Moreover, since the source of supply for all lands above Fort Quitman and below Elephant Butte reservoir, whether in Texas or New Mexico, is the reservoir itself, it could hardly be expected of Colorado and New Mexico that they should guarantee a certain amount of water to pass the Texas state line, since this amount is wholly dependent upon the releases from the reservoir and the reservoir is under the control of an entirely independent agency – the Bureau of Reclamation. Also, by contract between the New Mexico interests and the Texas interests in the Rio Grande Project, all the lands in the Project have equal water rights, and the acreage to be irrigated is practically “frozen” at its present figures, with a three per cent “cushion.” It is therefore not necessary, even if it were practicable, to make any definite provision in the Compact for the amount of water to pass the Texas-New Mexico state line.	NM-EX 329, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas to C.S. Clark, Chairman, Board of Water Engineers, State of Texas (October 16, 1938).	<b>Yes. See NM Response to TX at: - page 14, 23, 24, 53, 56</b>	<b>From TX's 12/22/20 Filings:</b> The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, disputed. This paragraph mischaracterizes the document, Letter from Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas to C.S. Clark, Chairman, Board of Water Engineers, State of Texas (October 16, 1938). NM-EX 329. As with the Clayton-Smith letter, the quotation offered from the Clayton-Clark letter is correct. NM-EX 328. However, attention to the details of the letter and the essential context for the letter reveals a different purpose and meaning for the communication and the provided quotation. The discussion is lengthy, and is incorporated herein by reference. See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 38 - 45.	Apportionment page 8-9; Apportionment page 39	Opp. to US - page 41 - page 42



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78	Apportionment No. 48	In 1968, Raymond Hill, the Engineer Advisor for the State of Texas during Compact negotiations, explained “that the Rio Grande Compact Commissioners, at the time of executing the Rio Grande Compact of 1938, anticipated that compliance” with Articles III and IV “would result in enough water entering Elephant Butte Reservoir to sustain an average normal release of 790,000 AF per year from Project storage for use on lands in New Mexico downstream of Elephant Butte Reservoir and on lands in Texas and also to comply with the obligations of the Treaty of 1906 for deliveries of water to Mexico.”	NM-EX 401, Raymond A. Hill, Development of the Rio Grande Compact of 1938, at 38 (Oct. 8, 1968) (emphasis added).	<b>Yes. See NM Response to TX at: - page 14, 23, 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-401: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, disputed. This paragraph does not provide sufficient context to understand fully the meaning of the quotation provided from Raymond Hill's Development of the Rio Grande Compact of 1938. NM-EX-401. The paragraph correctly quotes from Hill's narrative, but in the absence of context – much of which is also discussed in Miltenberger Declaration paragraphs	Apportionment page 9; Apportionment page 39	N/A
79	Apportionment No. 83	Consistent with the Reclamation Act, Texas adjudicated the Project Right in Texas. Specifically, it determined that EPCWID had the right to divert up to 376,000 from the Rio Grande.	NM-EX 505, Texas Comm’n on Env’t Quality, Certificate of Adjudication No. 23-5940, ¶ 1.b. (Mar. 7, 2007); see also Final Judgment and Decree, In re: The Adjudication of Water Rights in the Upper Rio Grande Segment of Rio Grande Basin, No. 2006-3219 (El Paso Cty. Dist. Ct., Oct. 30, 2006).	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-505: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The stated “facts” constitute improper legal conclusions in whole or in part.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed as follows: Regarding the “facts” asserted based on NM-EX-505, this paragraph is misleading in that the source documents provide additional factual context that New Mexico excluded and/or otherwise states “facts” out of context.	Apportionment page 17	N/A
79	Apportionment No. 83	Using the D1/D2 method, 376,000 AF represents approximately 43% of Project water when there is a full supply.	NM-EX 001, Barroll Decl. at ¶ 23.	<b>Yes. See NM Response to TX at: - page 56</b>	The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). Final Judgment and Decree, In re: The Adjudication of Water Rights in the Upper Rio Grande Segment of Rio Grande Basin, No. 2006-3219 (El Paso Cty. Dist. Ct., Oct. 30, 2006).	Regarding the asserted “fact” that “[u]sing the D1/D2 method, 376,000 AF represents approximately 43% of Project water when there is a full supply.” The use of the D1/D2 method produces 376,000 acre-feet for EP1. However, as the D1/D2 method does not reflect 1938 conditions and does not represent Texas’s Compact apportionment. <i>See</i> Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 29-32.	Apportionment page 17	N/A
79	Apportionment No. 83	376,000 AF also represents approximately 43% of Project supply under a normal release of 790,000 AF, once return flows are taken into account.	<i>See</i> , e.g., NM-EX 212, Gordon Dep. (July 15, 2020) at 20:11-21:11.	<b>Yes. See NM Response to TX at: - page 56</b>	NM-EX-001: Fed. R. Evid. 401, 402. The cited portion of the document is irrelevant because it does not stand for the “fact(s)” stated. NM-EX-212: <i>See</i> General Objection #8.	Regarding the last paragraph, the cited evidence does not represent the asserted “fact.” <i>See</i> NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 20:11-21:11.	Apportionment page 17	N/A
80	Apportionment No. 84	The Texas Compact Commissioner recognizes that a full supply release from the Project is 790,000 AF, and that Texas water users are entitled to 43% of Project supply and New Mexico water users are entitled to 57% of Project supply.	NM-EX 211, Gordon Dep (July 14, 2020) at 71:18-73:13; NM-EX 212, Gordon Dep. (July 15, 2020) at 11:20-13:21, 20:11-21:11, 121:9-11.	<b>Yes. See NM Response to TX at: - page 46, 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-211: <i>See</i> General Objection #8. NM-EX-212: <i>See</i> General Objection #8. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. The stated “fact” mischaracterizes the deposition testimony cited as evidence. The Texas Rio Grande Compact Commissioner testified that the water below the Reservoir is divided according to downstream contracts, and that EP#1 is entitled to receive 43 percent of the “790 times 120 percent on a full release.” NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 11:13-24; 20:11-21:11; NM-EX 211, Gordon Dep (Vol. I) (July 14, 2020) 71:18-72:10.	Apportionment page 17; Apportionment page 38	N/A
81	Apportionment No. 85	The Texas Compact Commissioner concedes that Rio Grande water is divided below Elephant Butte by the Downstream Contracts and that the Downstream Contracts “are incorporated into the Compact.”	NM-EX 212, Gordon Dep (July 15, 2020) at 10:25-12:19, 15:6-16:18.	<b>Yes. See NM Response to TX at: - page 46, 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-212: <i>See</i> General Objection #8. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. The stated “facts” mischaracterize the deposition testimony cited as evidence. The Texas Rio Grande Compact Commissioner testified that the water below the Reservoir is “allocated...to Mexico under the 1906 treaty, and then to EBID and EP1 under the 1938 contracts.” NM-EX 212, Gordon Dep (Vol. II) (July 15, 2020) 11:13-19. The Texas Rio Grande Compact Commissioner further testified that he thinks the Project is “incorporated into the Compact,” but not “under the Compact.” The “Compact was the mechanism for New Mexico to deliver its apportioned water to Texas. When the water is released from Elephant Butte reservoir, it’s delivered to the downstream contracts – contractors as well as Mexico.” NM-EX 212, Gordon Dep (Vol. II) (July 15, 2020) 15:6-17. The testimony of the Texas Rio Grande Compact Commissioner was not a “concession” as asserted by New Mexico, and the cited evidence does not support that assertion.	Apportionment page 17; Apportionment page 39	N/A

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82	Apportionment No. 86	The Texas Compact Commissioner concedes that the Project acts as the mechanism by which water users in New Mexico receive 57% of Project supply and water users in Texas are allocated 43% of Project supply. He further concedes that the mechanism for delivering Project water was incorporated into the Compact.	NM-EX 212, Gordon Dep. (July 15, 2020) at 10:25- 16:24.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-212: See General Objection #8. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The stated “facts” mischaracterize the deposition testimony cited as evidence. The Texas Rio Grande Compact Commissioner further testified that he thinks the Project is “incorporated into the Compact,” but not “under the Compact.” The “Compact was the mechanism for New Mexico to deliver its apportioned water to Texas. When the water is released from Elephant Butte reservoir, it’s delivered to the downstream contracts – contractors as well as Mexico.” NM-EX 212, Gordon Dep (Vol. II) (July 15, 2020) 15:6-17. The Texas Rio Grande Compact Commissioner testified that the water below the Reservoir is “allocated . . . to Mexico under the 1906 treaty, and then to EBID and EP1 under the 1938 contracts.” NM-EX 212, Gordon Dep (Vol. II) (July 15, 2020) 11:13-19. The Texas Rio Grande Compact Commissioner testified that the water below the Reservoir is divided according to downstream contracts, and that EP#1 is entitled to receive 43 percent of the “790 times 120 percent on a full release.” NM-EX 212, Gordon Dep. (Vol. II) (July 15, 2020) 11:13-24; 20:11-21:11; NM-EX 211, Gordon Dep (Vol. I) (July 14, 2020) 71:18-72:10.	Apportionment page 17; Apportionment page 39; Apportionment page 40; Apportionment page 41	N/A
82 [CONT.]	Apportionment No. 86	The Texas Compact Commissioner concedes that the Project acts as the mechanism by which water users in New Mexico receive 57% of Project supply and water users in Texas are allocated 43% of Project supply. He further concedes that the mechanism for delivering Project water was incorporated into the Compact.	NM-EX 212, Gordon Dep. (July 15, 2020) at 10:25- 16:24.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-212: See General Objection #8. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	(From TX's 12/20/20 Filings - Continued) The testimony of the Texas Rio Grande Compact Commissioner is consistent with the Texas’s position on apportionment, as stated by the Commissioner: “As the Rio Grande Compact Commissioner, I am authorized to state, under oath, the position of Texas on the issue of Compact apportionment. The position of Texas is as follows: The Compact equitably apportions the waters of the Rio Grande from its headwaters to Fort Quitman, Texas, among the State of Colorado (Colorado), the State of New Mexico (New Mexico), and Texas. Article III of the Compact provides water for use in Colorado, subject to the obligation to deliver indexed flows of water to New Mexico just below the Colorado-New Mexico state line. Articles III and IV of the Compact together provide water for use in New Mexico, subject to the obligation to deliver an indexed flow of water to Texas in Elephant Butte Reservoir. The water delivered by New Mexico in Elephant Butte Reservoir is apportioned to Texas, subject to the United States’ Treaty obligation to Mexico and the United States’ contractual obligations to Elephant Butte Irrigation District (EBID). The Compact does not apportion water to New Mexico below Elephant Butte Reservoir. The water released from Elephant Butte Reservoir and delivered to EBID pursuant to the United States’ downstream contracts with EBID, is not a Compact apportionment to New Mexico. This water is a Project allocation, defined by the United States’ downstream contracts with EBID. Article VII of the Compact provides that Texas may accept relinquished water (relinquished by Colorado and New Mexico) thereby allowing additional storage in upstream reservoirs. New Mexico has no ability to accept water under the Compact, even from itself, for the benefit of interests downstream of Elephant Butte Reservoir. Article VIII of the Compact provides that the Texas Rio Grande Commissioner can demand of Colorado and New Mexico the release of water from the upstream storage reservoirs under specified circumstances.”		
83	Apportionment No. 87	In official remarks at the 2011 RGCC meeting, Texas Compact Commissioner Gordon acknowledged that the Compact apportioned water between New Mexico and Texas based on the 57%-43% split. Specifically, Commissioner Gordon responded to comments of the New Mexico Commissioner by stating “I agree that the purpose of the Compact was to allocate the water between the Districts and the 53[-]47 [sic] as provided in the Compact. I do agree with that.”	NM- EX 518, Rio Grande Compact Commission, Transcript of the 72nd Annual Meeting (94th Meeting), 59:2-4 (Mar. 30, 2011).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-518: See General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	See Gordon Dec. in Opp. to NM at TX_MSJ_007269, paragraphs 1 – 8; See also, Deposition of Patrick R. Gordon, (Vol. 1) (July 14, 2020) (Gordon Depo. 7/14/20), at 67:4-20; 144:7-16; 157:2-12; 157:23-159:14; 161:17-162:6; 162:12-163:2; 164:7-165:7; 165:23-167:11; 169:10-17, at TX_MSJ_006892-006940.	Apportionment page 17; Apportionment page 38	N/A
84	Apportionment No. 88	In 2004, the Texas Compact Engineer Advisor from 1987 to 2015 wrote that “[t]he Compact specifies a normal release of 790,000 acre–feet annually from Project Mexico for use in Texas and New Mexico and for delivery of water to Mexico.”	NM-EX 412, Herman R. Settemeyer, “Rio Grande Project/Rio Grande Compact Operation,” in CLE International, Rio Grande Superconference G-1, G-2 (2004).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-412: See General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The cited evidence does not support the asserted facts. The document is unauthenticated, and there is no evidence of who the author was, or the authority of the author to make any statement on behalf of Texas as to the meaning and/or purpose of the Compact. Even if the documents contents were taken as true, the quoted sentence is taken out of context. The sentence, in context, concerns an explanation of Project operations.	Apportionment page 17	N/A
85	Apportionment No. 89	The Texas Compact Engineer Advisor from 1987 to 2015 testified that “the Rio Grande Compact incorporated the Rio Grande Project.”	NM-EX 225, Settemeyer Dep. (July 30, 2020) at 41:24-42:10.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-225: See General Objection #8; Fed. R. Evid. 602.	From TX's 12/22/20 Filings: Subject to the stated objection, disputed in part. The cited deposition testimony does not establish that the deponent was the Engineer Advisor from 1987 to 2015.	Apportionment page 17	N/A
86	Apportionment No. 90	The Texas Compact Engineer Advisor from 1987 to 2015 further testified that “the Rio Grande Project [water] is apportioned 57 – 57 percent to New Mexico and 43 percent to Texas.”	NM-EX 225, Settemeyer Dep. (July 30, 2020) at 41:24-42:10.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-225: See General Objection #8; Fed. R. Evid. 602.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The evidence cited does not support the asserted “fact.”	Apportionment page 18	N/A

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
87	Apportionment No. 91	In May of 2011, Texas and New Mexico met to discuss the implications of the 2008 Operating Agreement on the Compact. Prior to the meeting, Texas had developed a set of talking points that represented Texas's positions on the Rio Grande Compact. A photograph of those talking points is NM-EX 519 (Schmidt-Petersen, Photographs of Handwritten Notes on Easel).	NM-EX 003, Lopez Decl. at ¶ 18; NM-EX 004, Schmidt-Petersen Decl. at ¶ 11.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-519: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-003: See General Objection #2; Fed. R. Evid. 602; Fed. R. Evid. 801(c), hearsay. NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. Texas Compact Commissioner Patrick Gordon reviewed the representation of Rolf Schmidt-Petersen in paragraph 11 of his declaration submitted in support of the New Mexico motions for partial summary judgment (NM-EX 004) and referenced in paragraph 91, page 18, of the New Mexico motion on Compact apportionment. He also reviewed the representation of Estevan Lopez in paragraph 18 of his declaration submitted in support of the New Mexico motions for partial summary judgment (NM-EX-003) and referenced in paragraph 91, page 18, of the New Mexico motion on Compact apportionment. Both deponents use the same language, verbatim, for this testimony. Both deponents refer to NM-EX-519. Commissioner Gordon reviewed NM-EX 519 in conjunction with making his declaration. Commissioner Gordon attended a meeting in approximately May of 2011 with representatives of New Mexico. The purpose of the meeting was to discuss the Operating Agreement. Compact apportionment was not a subject of the meeting. The handwriting depicted in NM-EX-519 is not Commissioner Gordon's. He does not know whose handwriting is depicted in NM-EX-519. The notes depicted in NM-EX-519 were not "talking points that represented Texas's position on the Rio Grande Compact" as stated by declarants Lopez and Schmidt-Petersen. Further, the declarants' representations of Commissioner Gordon's statements, and Texas's "positions" are incorrect. Commissioner Gordon did not make any statement, or represent that it was the position of Texas, that the Compact apportions water below Elephant Butte Reservoir between New Mexico and Texas. Commissioner Gordon did not make any statement, or represent that it was the position of Texas, that there is a 57/43 apportionment pursuant to the Compact. See Gordon Dec. in Opp. to NM at TX_MSJ_007269, paragraphs 1 – 8, 12.	Apportionment page 18	N/A
87	Apportionment No. 91	Using those talking points, Texas expressed its position that the Compact apportions the water below Elephant Butte between New Mexico and Texas "based on acreage" existing in each State. Texas further explained its position that under the Compact, the State of Texas is entitled to 43% of Project supply and the State of New Mexico is entitled to 57% of Project supply.	NM-EX 519, Schmidt-Petersen, Photographs of Handwritten Notes on Easel; NM-EX 003, Lopez Decl. at ¶ 18; NM-EX 004, Schmidt-Petersen Decl. at ¶ 11.	Yes. See NM Response to TX at: - page 56	NM-EX-519: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-003: See General Objection #2; Fed. R. Evid. 602; Fed. R. Evid. 801(c), hearsay. NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. Texas Compact Commissioner Patrick Gordon reviewed the representation of Rolf Schmidt-Petersen in paragraph 11 of his declaration submitted in support of the New Mexico motions for partial summary judgment (NM-EX 004) and referenced in paragraph 91, page 18, of the New Mexico motion on Compact apportionment. He also reviewed the representation of Estevan Lopez in paragraph 18 of his declaration submitted in support of the New Mexico motions for partial summary judgment (NM-EX-003) and referenced in paragraph 91, page 18, of the New Mexico motion on Compact apportionment. Both deponents use the same language, verbatim, for this testimony. Both deponents refer to NM-EX-519. Commissioner Gordon reviewed NM-EX 519 in conjunction with making his declaration. Commissioner Gordon attended a meeting in approximately May of 2011 with representatives of New Mexico. The purpose of the meeting was to discuss the Operating Agreement. Compact apportionment was not a subject of the meeting. The handwriting depicted in NM-EX-519 is not Commissioner Gordon's. He does not know whose handwriting is depicted in NM-EX-519. The notes depicted in NM-EX-519 were not "talking points that represented Texas's position on the Rio Grande Compact" as stated by declarants Lopez and Schmidt-Petersen. Further, the declarants' representations of Commissioner Gordon's statements, and Texas's "positions" are incorrect. Commissioner Gordon did not make any statement, or represent that it was the position of Texas, that the Compact apportions water below Elephant Butte Reservoir between New Mexico and Texas. Commissioner Gordon did not make any statement, or represent that it was the position of Texas, that there is a 57/43 apportionment pursuant to the Compact. See Gordon Dec. in Opp. to NM at TX_MSJ_007269, paragraphs 1 – 8, 12.	Apportionment page 18	N/A
88	Apportionment No. 92	Even in this litigation, Texas has admitted on numerous occasions that New Mexico has a Compact apportionment below Elephant Butte Reservoir. a. In its Complaint in this case, Texas made the following relevant factual allegations: i.) "[T]he Rio Grande Compact, among other purposes, was entered into to protect the operation of the Rio Grande Reclamation Project."	a. (i) Compl. ¶ 4 (Jan. 8, 2013).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. a. Regarding the Texas Complaint, New Mexico takes allegations out of context, and excludes other allegations relevant to Texas's position on apportionment, that support Texas's consistent position on apportionment. Paragraph 4 articulates Texas's position that in delivering water to Elephant Butte, New Mexico in fact relinquishes that water to the Project: "[t]he Rio Grande Compact requires that New Mexico deliver specified amounts of Rio Grande water into Elephant Butte Reservoir [and that once] delivered to Elephant Butte Reservoir, that water is allocated and belongs to Rio Grande Project beneficiaries in southern New Mexico and in Texas, based upon allocations derived from the Rio Grande Project authorization and relevant contractual arrangements."	Apportionment page 18-19; Apportionment page 39; Apportionment page 40; Apportionment page 41	N/A
88	Apportionment No. 92	ii.) "Project water deliveries are made based upon the ratio between the irrigable acreage of the Rio Grande Project situated in New Mexico, and the irrigable acreage of the Rio Grande Project situated in Texas. Historically, this ratio has been 57% in New Mexico and 43% in Texas."	a. (ii) Id. at ¶ 8.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	From TX's 12/22/20 Filings: Paragraph 11 alleges: The State of Texas entered into the Rio Grande Compact under the following fundamental premises: (a) the operation of the Rio Grande Project by the United States, and the Rio Grande Project's allocations to Texas, were recognized and protected by the Rio Grande Compact; (b) New Mexico was required to make deliveries into Elephant Butte Reservoir to ensure that the United States could continue to operate the Rio Grande Project, and thereby provide for deliveries of water from the Rio Grande Project as had been previously authorized; and (c) New Mexico would not allow Rio Grande Project water allocated by the United States to Texas to be intercepted above the Texas state line for use in New Mexico.	Apportionment page 18-19; Apportionment page 39; Apportionment page 40; Apportionment page 41	N/A



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88	Apportionment No. 92	iii.) The Compact “relied upon the Rio Grande Project and its allocation and delivery of water in relation to the proportion of Rio Grande Project irrigable lands in southern New Mexico and in Texas, to provide the basis of the allocation of Rio Grande waters between Rio Grande Project beneficiaries in southern New Mexico and the State of Texas.”	a. (iii) Id. at ¶ 10.	Yes. See NM Response to TX at: - page 56	Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	In full context, Paragraph 10 of Texas’s Complaint is simply stating that in lieu of a specific quantitative or state-line delivery measure, the Compact relied on the Project as it existed in 1938 to deliver Texas’s apportioned water from Elephant Butte to the state line. In other words, “the Compact utilized the Rio Grande Project to ensure that Texas receives the water that was apportioned to it. Usable Water is available for release to meet irrigation demands on Rio Grande Project lands in New Mexico and in Texas, as well as for delivery to Mexico to satisfy treaty obligations. It is not available for use and appropriation in New Mexico pursuant to New Mexico state law.”  Texas Brief in Opposition to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 28 (June 16, 2014). Page 22 of Texas’s 2014 Brief in Opposition to New Mexico’s Motion to Dismiss encapsulates the Complaint: “Texas asserts that the Compact requires New Mexico to deliver a scheduled amount of Rio Grande water into Elephant Butte Reservoir, to relinquish control of that water for storage and distribution by the Rio Grande Project, and not to intercept, deplete or otherwise interfere with water released by the Rio Grande Project for the benefit of Rio Grande Project lands in Texas. Compl. at paragraphs 10-11, 13, 18-19. New Mexico violates the Compact, including its delivery obligation in Article IV, when it allows water users to intercept, deplete or otherwise divert flows of the Rio Grande below Elephant Butte, which adversely affects Rio Grande Project operations including the amount of water that flows to irrigable lands in Texas. Compl. at paragraphs 18-19.” Texas Brief in Opposition to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 22 (June 16, 2014). “The water apportioned to New Mexico by the Compact is the water in the Basin above Elephant Butte in excess of its delivery obligation, less the waters apportioned to Colorado. ... No water below Elephant Butte is apportioned to New Mexico.” Texas’s Brief in Response to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 10 (June 16, 2014).	Apportionment page 18-19; Apportionment page 39; Apportionment page 40; Apportionment page 41	N/A
88	Apportionment No. 92	b. Texas’s brief in support of its motion to file its complaint referred to Elephant Butte Irrigation District as the entity formed within New Mexico to contract with the United States “for the water allocated and apportioned for use within New Mexico.”	b. Texas’s Brief in Support of Motion to File Complaint 7 (Jan. 2013) (emphasis added).	Yes. See NM Response to TX at: - page 56	Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	b. Regarding Texas’s brief in support of its motion to file its complaint, the entity that this sentence actually concerns is the Elephant Butte Water Users Association, the predecessor entity to EBID, and in context the sentence is not referring to the Compact at all, but specifically to a 1906 contract between that entity and the United States for the use of not-yet-developed Rio Grande Project water. Texas’s Brief in Support of Motion to File Complaint at 7.	Apportionment page 18-19; Apportionment page 39; Apportionment page 40; Apportionment page 41	N/A
88	Apportionment No. 92	c. In the course of its briefing on New Mexico’s Motion to Dismiss, Texas defined its apportionment as “the water New Mexico delivers to Elephant Butte, less the water provided to Rio Grande Project lands in New Mexico by the Rio Grande Project.”	c. Texas’ Brief in Response to New Mexico’s Motion to Dismiss Texas’ complaint and the United States’ Complaint in Intervention, 11 (June 16, 2014).	Yes. See NM Response to TX at: - page 56	Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	c. Regarding briefing on New Mexico’s Motion to Dismiss, New Mexico cites to an excerpt that it views as favorable to its position, and omits that on the very preceding page of that brief, Texas expressly defined New Mexico’s apportionment: “The water apportioned to New Mexico by the Compact is the water in the Basin above Elephant Butte in excess of its delivery obligation, less the waters apportioned to Colorado. ... No water below Elephant Butte is apportioned to New Mexico.” Texas’s Brief in Response to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 10 (June 16, 2014). In that same brief: “The Compact requires New Mexico to deliver water into Elephant Butte Reservoir and to thereby relinquish control of the water for storage and distribution by the Rio Grande Project. New Mexico’s jurisdiction over the waters in the Lower Rio Grande is limited by both the express requirements of the Compact and the operation of the Rio Grande Project. New Mexico has ceded regulatory authority over this portion of the Rio Grande. The Commissioner negotiating the Compact for New Mexico recognized this cession of control when he stated: ‘[f]or purposes of the Compact, Elephant Butte Dam should be deemed to be the dividing line between New Mexico and Texas.’” Brief in Response to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 19 (June 16, 2014). “[Las Cruces argues] it would have been ‘absurd’ for New Mexico to enter a compact ‘which limited water rights below Elephant Butte Reservoir to the irrigation interests of the Rio Grande Project . . . .’ In making this argument, Las Cruces ignores that in the negotiations leading to the Compact, New Mexico users below the Dam were aligned with Texas. Moreover, Las Cruces ignores the fact that New Mexico traded off additional benefits to lands below Elephant Butte in New Mexico in return for the substantial benefits it obtained for lands in the Middle Rio Grande in New Mexico.” Brief in Response to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 20, FN12 (June 16, 2014) (citations omitted).	Apportionment page 18-19; Apportionment page 39; Apportionment page 40; Apportionment page 41	N/A



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88	Apportionment No. 92	d. Further, in briefing on exceptions to the First Interim Report of the Special Master, Texas averred: “[T]he compact utilizes the Rio Grande Project, operated by the United States, as the single vehicle by which to apportion Rio Grande water to Texas and New Mexico.”	d. See Texas’s Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017) (quotation marks omitted).	Yes. See NM Response to TX at: - page 56	Allegations in a Complaint (unverified), or language in a brief supporting a motion that is not based on evidence, do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	d. In Texas’s briefing on exceptions to the First Interim Report of the Special Master, Texas stated: “‘ . . . the plain text of Article IV of the 1938 Compact requires New Mexico to relinquish control and dominion over the water it deposits in Elephant Butte Reservoir.’ First Report at 197. New Mexico’s duties to relinquish control of the water at Elephant Butte and refrain from post-Compact depletions of water below Elephant Butte Reservoir do not arise from any implied covenant or implied term, but from the very meaning of the text of the Compact.” Texas’s Reply to Exceptions to First Interim Report of Special Master, 17 (July 28, 2017) “The terms of the Compact provide that three sovereign states agreed to an equitable apportionment of an interstate stream, which Congress approved. Thus, the Compact is not silent on what occurs below Elephant Butte Reservoir. The law of equitable apportionment applies because the Compact expressly apportions Rio Grande water and then used the Project as the “sole method” for distributing that equitable apportionment to New Mexico, Texas, and Mexico. First Report at 201. Likewise, the Compact is not silent on what occurs below Elephant Butte Reservoir when it expressly provides for New Mexico’s obligation to “deliver” water at Elephant Butte. Neither New Mexico nor its citizens can take back or attempt to reassert control under state processes over water apportioned to Texas.” Texas’s Reply to Exceptions to First Interim Report of Special Master, 31 (July 28, 2017) “New Mexico does not have the legal authority to administer or adjudicate rights under state law to water that has been equitably apportioned to Texas under the Rio Grande Compact. Once New Mexico has delivered that apportioned water to Elephant Butte Reservoir, it has relinquished jurisdiction over the distribution of that water, as the Special Master properly held.” Texas’s Reply to Exceptions to First Interim Report of Special Master, 33 (July 28, 2017)	Apportionment page 18-19; Apportionment page 39; Apportionment page 40; Apportionment page 41	N/A
89	Apportionment No. 93	In connection with filing the Complaint in this case, Texas issued a News Release. In that News Release, Texas admitted “[h]istorically, water apportioned under the Rio Grande Compact has resulted in approximately 57 percent of the water supply below the Elephant Butte Reservoir being delivered to New Mexico, and 43 percent being delivered across the New Mexico-Texas state line for Texas.”	NM-EX 524, Tex. Comm’n on Env’t Quality, News Release, 2 (Jan. 8, 2013) (emphasis added).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-524: See General Objection #8; Fed. R. Civ. P. 56(c); Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The cited evidence does not support the asserted facts. The document is unauthenticated, and there is no evidence of who the author was, or the authority of the author to make any statement on behalf of Texas as to the meaning and/or purpose of the Compact.	Apportionment page 19	N/A
90	Apportionment No. 94	Every alternate year the Texas Commission on Environmental Quality (“TCEQ”) reports to the Texas Legislature about environmental issues, including interstate river compacts. In describing the Rio Grande Compact in 2014, the TCEQ explained “[t]he compact did not contain specific wording regarding the apportionment of water in and below Elephant Butte Reservoir. However, the compact was drafted and signed against the backdrop of the 1915 Rio Grande Project and a 1938 U.S. Bureau of Reclamation contract that referred to a division of 57 percent to New Mexico and 43 percent to Texas.”	NM-EX 526, Texas Comm’n on Env’t. Quality, Biennial Report to the 84th Legislature (2014) (emphasis added).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-526: See General Objection #8; Fed. R. Civ. P. 56(c); Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The cited evidence does not support the asserted facts. The document is unauthenticated, and there is no evidence of who the author was, or the authority of the author to make any statement on behalf of Texas as to the meaning and/or purpose of the Compact.	Apportionment page 19	N/A
91	Apportionment No. 95	In New Mexico’s adjudication of Lower Rio Grande water rights, the United States requested that the New Mexico Adjudication Court “recognize an amount of up to 376,000 acre- feet per year for delivery to Texas.”	See NM-EX 527, Order (1) Granting Summary Judgment Regarding the Amounts of Water; (2) Denying Summary Judgment Regarding Priority Date; (3) Denying Summary Judgment to the Pre-1906 Claimants; and (4) Setting a Scheduling Conference, New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irr. Dist., no. CV-96-888, ¶ 4 (N.M. 3d Judicial Dist., Feb. 17, 2014).1 fn1 In response to the United States request that New Mexico recognize 376,000 AFA for delivery to Texas, the New Mexico Adjudication Court explained that the United States’ request was beyond the jurisdiction of the court, but that the “State of New Mexico’s offer of judgment appropriately recognizes Project deliveries to Texas as an essential element of the Project.” Id.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-527: See General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. This paragraph is misleading. Although the quoted language is contained within NM-EX-527, New Mexico does not include the full context of the Court’s statement, and there is no foundation to infer the intent of the United States in making that statement, or others, to the Court. The full text of the Court’s discussion in NM-EX 527 clearly denotes that the subject is “Project deliveries to Texas as an essential element of the Project.” Nothing in NM-EX-527 supports the implication that the statement attributed to the United States was predicated on a position about Compact apportionment as opposed to simply an effort to preserve its contract delivery obligations to Texas, or some other reason.	Apportionment page 19	N/A

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91	Apportionment No. 95	As discussed, under the D1/D2 method, 376,000 acre- feet was a full supply for EPCWID, and represents approximately 43% of Project water when there is a full supply.	N/A	Yes. See NM Response to TX at: - page 56			Apportionment page 19	N/A
92	Apportionment No. 96	Reclamation has recognized that “[b]ecause one district is located in New Mexico (EBID) and the other is located in Texas (EP#1), the operation of the Rio Grande Project has a bearing on each state’s claim to the waters of the Rio Grande.”	NM-EX 503, Briefing Paper by Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Robert W. Johnson, Commissioner, Bureau of Reclamation (Nov. 2, 2006).	Yes. See NM Response to TX at: - page 56	<b>From TX's 12/22/20 Filings:</b> NM-EX-503: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>“From TX's 12/22/20 Filings:”</b> Subject to the stated objections, disputed. This paragraph is misleading. Although the quote from NM-EX503 is recited correctly, Texas disputes that Reclamation “recognized” anything pertaining to Compact apportionment below the Reservoir. New Mexico does not include the full context of the document. The stated purpose of the document is to “update the status of the . . . Project . . . operating agreement negotiations” between EBID, EP#1 and the United States. There is no foundation to support New Mexico’s implication that the quoted statement was Reclamation recognizing a Compact apportionment to New Mexico below Elephant Butte.	Apportionment page 19	N/A
93	Apportionment No. 97	Reclamation has acknowledged the intent of the Compact “to recognize a yearly average of 790,000 AF release from Project storage to satisfy water users” in both States and Mexico.	NM- EX 411, Letter from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to William A. Paddock, 2 (Sept. 11, 2002).	Yes. See NM Response to TX at: - page 56	<b>From TX's 12/22/20 Filings:</b> NM-EX-411: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. New Mexico misrepresents the author’s statement in NM-EX-411, and takes the excerpt out of context. The full sentence quoted by New Mexico is as follows: “Reclamation interprets this accrued departure from normal release as a measure of how the Rio Grande Project is complying with its obligation to meet yearly demand from the water users of the Rio Grande Project and at the same time comply with the Rio Grande Compact intent to recognize a yearly average of 790,000 AF release from Project storage to satisfy water users within the ‘Texas portion’ of the Compact.” NM-EX-411, 2 (emphasis added). Thus, NM-EX-411 actually supports Texas’s position: that the 790,000 AF release from Project storage is Texas’s apportionment, subject to the 1906 Treaty and downstream contract (constituting “water users within the ‘Texas portion’ of the Compact”).	Apportionment page 19- 20; Apportionment page 38	N/A
94	Apportionment No. 98	Reclamation has recognized that “[t]he 1938 Rio Grande Compact intended to use the Reclamation Rio Grande Project as the vehicle to guarantee delivery of Texas’s, New Mexico’s and Mexico’s equitable apportionment of the Rio Grande waters below Elephant Butte Dam.”	NM-EX 530, Filiberto Cortez, Bureau of Reclamation, EBID Depletion Reduction and Offset Program WaterSMART Grant Proposal, at 1 (emphasis added).	Yes. See NM Response to TX at: - page 56	<b>From TX's 12/22/20 Filings:</b> NM-EX-530: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph is misleading. Although the quote from NM-EX-530 is recited correctly, Texas disputes that Reclamation “recognized” anything pertaining to Compact apportionment below the Reservoir. New Mexico does not include the full context of the document. The language quoted is within a paragraph that describes the background of the parties’ positions in this case. There is no foundation to support New Mexico’s implication that the quoted statement was Reclamation recognizing a Compact apportionment to New Mexico below Elephant Butte. It is pure speculation as to the intent of the author in including the quoted language, and whether or not that language is intended to capture one of the parties’ positions in this case, or otherwise.	Apportionment page 20; Apportionment page 39; Apportionment page 40	N/A
95	Apportionment No. 99	At the hearing on New Mexico’s Motion to Dismiss in this proceeding, counsel for the United States conceded that the “[P]roject is central to the [C]ompact,” that “New Mexico would also, by the same token, have an apportionment” delivered through the Project, and that the Downstream contracts “effectuate the intended apportionment that is made in the [C]ompact.”	Hrg. Tr. 88:17, 91:6-14, 100:7-18 (Aug. 19, 2015).	Yes. See NM Response to TX at: - page 56	<b>From TX's 12/22/20 Filings:</b> Hrg. Tr. 88:17, 91:6-14, 100:7-18 (Aug. 19, 2015); Fed. R. Evid. 901; Fed. R. Evid. 801(c), hearsay. Statements by lawyers during a hearing are not sworn testimony and do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The transcript excerpt is not supported by evidence and, as such, is inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. Statements by lawyers during a hearing are not sworn testimony and do not constitute factual “evidence” for purposes of summary judgment. Additionally, the language New Mexico quotes omits the statement immediately following the quoted portion: “So all flows at Elephant Butte are delivered not merely to the river, but they are delivered to project storage. Again, the project is central here. So, in delivering it to the project storage, the Special Master has to interpret it that New Mexico simply doesn't have the authority to claw it back. The delivery means something. It's transferring. It's putting it in the possession and control of the project for effectuating the apportionment. If this was a commercial good, it would be a transfer in a manner that can't be recalled by the grantor. But here New Mexico is arguing exactly the opposite, that having relinquished control, having transferred, having delivered that water, they can immediately start clawing it back before the usable water, which is usable for the project, for irrigation -- before it can even get to the first headgate, they can start clawing it back because, they assert, there's no ground rules below Elephant Butte.” See Docket No. 37, Transcript of August 19, 2015 Oral Argument Before A. Gregory Grimsal, Esq. Special Master, 91:15 – 92:6.	Apportionment page 20	N/A
96	Apportionment No. 100	The United States has taken the following relevant positions in this case: a. “New Mexico receives an additional apportionment of water under the Compact below Elephant Butte Reservoir, and Texas receives its entire equitable apportionment of water, through the Project, in the form of water released by the Project ‘in accordance with irrigation demands.’ Those deliveries are divided according to the 57% to 43% split reflecting the historical proportion of irrigation acreage in EBID and EPCWID, respectively.”	a. Brief for the United States in Opposition to New Mexico’s Motion to Dismiss Texas’s Complaint and the United States’ Complaint in Intervention, 28 (June 2014) (quoting NM-EX 330, Compact at Art. I(l)).	Yes. See NM Response to TX at: - page 13, 56	<b>From TX's 12/22/20 Filings:</b> Language/arguments in a brief supporting a motion do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. New Mexico purports to rely on certain statements attributed to the United States that support its own positions on the apportionment issue while ignoring other adverse statements the United States expresses in the same pleadings. 100a Following the quoted statement, the United States adds: “[t]he Compact necessarily limits the extraction of hydrologically connected groundwater, to the extent that the groundwater is necessary for the Project to make deliveries in response to irrigation demands,” (30); and that “[t]his Court has previously recognized that groundwater pumping that interferes with the equitable apportionment of water under an interstate compact must be counted toward a state’s use of its equitable apportionment.” (31). Elsewhere, the United States repeats its claim, according with Texas’s, that “New Mexico is in breach of its obligation under Article IV of the Compact to ‘deliver’ the water—and thus to relinquish control of it—at Elephant Butte Reservoir.”	Apportionment page 20	Opp. to US - page 35

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
96	Apportionment No. 100	b. “Usable Water” is “available for release in accordance with irrigation demands in lower New Mexico, in Texas, and in Mexico.”	b. Reply Brief for the United States on Exceptions by the States of New Mexico and Colorado to the First Interim Report of the Special Master, 6 (July 2017).	Yes. See NM Response to TX at: - page 13, 56	Language/arguments in a brief supporting a motion do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico	100b This recitation offers nothing to further New Mexico’s claim, and is in fact entirely consistent with Texas’s fundamental position that Texas is apportioned all the water New Mexico delivers to Elephant Butte, less Mexico’s treaty water and water allocated (not apportioned) to EBID under its Reclamation contract.	Apportionment page 20	N/A
96	Apportionment No. 100	c. “To effectuate an equitable apportionment of the waters of the Rio Grande, the compacting States incorporated and relied upon an existing reclamation project ‘as the vehicle to guarantee delivery of Texas’s and part of New Mexico’s equitable apportionment of the stream.’ The United States agreed to that arrangement through congressional approval of the Compact.”	c. Id. at 18 (emphasis added) (quoting First Interim Report of the Special Master, 204 (Feb. 9, 2017)).	Yes. See NM Response to TX at: - page 13, 56	Language/arguments in a brief supporting a motion do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico	100c On the same page, the United States expresses a position that undermines the one New Mexico attributes to it: “By compact, New Mexico agreed that it would deliver water to the Project at Elephant Butte Reservoir, Compact Art. IV, 53 Stat. 788, at which point it becomes “[u]sable [w]ater” that must be available for release in accordance with irrigation demands in lower New Mexico, in Texas, and in Mexico, Compact Art. I(l), 53 Stat. 786. New Mexico cannot administer water rights in the area of New Mexico below Elephant Butte Reservoir in a way that interferes with the Project’s ability to make deliveries to satisfy those demands.”	Apportionment page 20	N/A
96	Apportionment No. 100	d. “In the Compact, the States (i) incorporated and relied upon an existing Reclamation project to deliver Texas’s and part of New Mexico’s equitable apportionment.”	d. Sur-Reply Brief for the United States on Exceptions by the States of New Mexico and Colorado to the First Interim Report of the Special Master, 12-13 (September 2017).	Yes. See NM Response to TX at: - page 13, 56 )	Language/arguments in a brief supporting a motion do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico		Apportionment page 20	N/A
96	Apportionment No. 100	e. “[T]he Compact identifies what is to be done with water that is delivered by New Mexico to Elephant Butte Reservoir, and the Compact ‘protects the water that is released from Elephant Butte in order for it to reach its intended destination.’”	e. Id. at 13 (quoting First Interim Report of the Special Master, 200 (Feb. 9, 2017)).	Yes. See NM Response to TX at: - page 13, 56	Language/arguments in a brief supporting a motion do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico	100e New Mexico omits that Texas is the “intended destination” the United States refers to. The next sentence states: “Indeed, if the Compact did not prohibit New Mexico water users from interfering with Project deliveries, ‘then the question of Texas’s equitable apportionment’ under the Compact would be ‘an open, major source of controversy,’ contrary to the basic purpose of the Compact to ‘effect[] an equitable apportionment of’ the waters of the Rio Grande above Fort Quitman, Texas.” (quoting First Interim Report of the Special Master, 200 (Feb. 9, 2017))	Apportionment page 20	N/A
97	Apportionment No. 101	In response to a Request for Admission, the United States admitted for all purposes in this case that “under the Compact, the states relied upon an existing Reclamation project to deliver Texas’s and part of New Mexico’s equitable apportionment.”	NM-EX 602, United States of America’s Responses to New Mexico’s First Set of Requests for Admission, 13 (November 4, 2019) (response to Request for Admission 30).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-602: See General Objection #8; Fed. R. Evid. 801(c), hearsay. The stated “facts” constitute improper legal conclusions in whole or in part.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The quoted language is taken out of context, mischaracterizes the Request for Admission response, and ignores the objection expressed by the United States in responding to the Request for Admission. In its quoted response to New Mexico’s Request for Admission No. 30, the full response of the United States is that it “avers that in its Reply and Sur-Reply briefs in the Supreme Court, the United States stated its position that under the Compact . . . .” Thus, the United States only “admitted” stating that position in a brief. Any factual or legal interpretation beyond that is speculation. The United States further objected to the compound nature of New Mexico’s request, and that the request sought admission of the truth of a conclusion of law.	Apportionment page 21	N/A
98	Apportionment No. 102.	The expert historian sponsored by the United States in this case has opined that that the States intended for the Compact to apportion surface water below Elephant Butte Reservoir to New Mexico for the lands in New Mexico under the Rio Grande Project.	NM-EX 215, Kryloff Dep. (Aug. 6, 2020) at 52:23-53:8, 73:23-74:9.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-215: See General Objection #8. Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. Texas disputes that the States intended for the Compact to apportion any Rio Grande surface water below the Reservoir New Mexico. See Miltenberger Declaration, TX_MSJ_001585 and Miltenberger Dec. in Opp. to NM at TX_MSJ_007371; See Gordon Dec. in Opp. to NM at TX_MSJ_007269.	Apportionment page 21	N/A
99	Apportionment No. 103	Consistent with the Reclamation Act (and the adjudication in Texas), New Mexico adjudicated the Project Right in New Mexico. In accordance with the Compact, the New Mexico Adjudication Court established that the Project is entitled to an annual release of up to 790,000 acre-feet.	See NM-EX 527, Order (1) Granting Summary Judgment Regarding the Amounts of Water; (2) Denying Summary Judgment Regarding Priority Date; (3) Denying Summary Judgment to the Pre-1906 Claimants; and (4) Setting a Scheduling Conference, New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irr. Dist., no. CV-96-888 (N.M. 3d Judicial Dist., Feb. 17, 2014).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-527: See General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The evidence (NM-EX-527) does not support the asserted fact. New Mexico states “[i]n accordance with the Compact, the New Mexico Adjudication Court established that the Project is entitled to an annual release of up to 790,000 acre-feet.” Exhibit NM-EX-527 does not state “[i]n accordance with the Compact” but states “or as otherwise provided for by the Rio Grande Compact.” See NM-EX-527 at 2.	Apportionment page 21	N/A



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100	Apportionment No. 104	Unlike Texas, the New Mexico Adjudication Court set limits on the amount of surface water and groundwater that could be diverted or consumed on an acre of Project land in New Mexico.	See NM-EX 527, Final Judgment, New Mexico ex rel. Office of the State Engineer v. Elephant Butte Irr. Dist., no. CV-96-888 (N.M. 3d Judicial Dist., Aug. 22, 2011).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-527: See General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The evidence (NM-EX-527) does not support the asserted fact. Exhibit NM-EX-527 provides no support for the “[u]nlike Texas” portion of the asserted fact. Further, the stated “fact” is a conclusory, overbroad, statement, without foundation in the cited evidence.	Apportionment page 21	N/A
100	Apportionment No. 104	Consistent with Reclamation operations and analysis, New Mexico recognized the right for each Project acre to receive 3.024 acre-feet per annum of surface water.	Id. at ¶ I.A.	Yes. See NM Response to TX at: - page 56	NM-EX-527: General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.	Subject to the stated objections, disputed. The evidence (NM-EX-527) does not support the asserted fact. Exhibit NM-EX-527 provides no support for the “[u]nlike Texas” portion of the asserted fact. Further, the stated “fact” is a conclusory, overbroad, statement, without foundation in the cited evidence.	Apportionment page 21	N/A
101	Apportionment No. 105	Prior to this litigation, New Mexico has consistently taken the position that the Compact divides the waters below Elephant Butte according to the acreage in each State so that New Mexico is entitled to 57% and Texas is entitled to 43% of Project supply. For example, in negotiations that occurred during the 1990s and 2000s, New Mexico was steadfast in its position that a potential operating agreement for the Project could not alter the 57-43 division of water below Elephant Butte that was required by the Compact.	NM-EX 004, Schmidt-Petersen Decl. at ¶ 12; NM-EX 003, Lopez Decl. at ¶ 17; NM-EX 002, D’Antonio Decl. at ¶ 13.	Yes. See NM Response to TX at: - page 24, 25, 56	From TX's 12/22/20 Filings: NM-EX-003: See General Objection #2; Fed. R. Civ. P. 56(c)(4). NM-EX-004, 002: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602, 701: Mr. Schmidt-Petersen, and Mr. D’Antonio lack personal knowledge regarding all circumstances considering New Mexico’s positions “[p]rior to this litigation” and the statement regarding the requirements of the Compact is an improper legal conclusion and improper opinion testimony of a lay witness with respect to Mr. Schmidt-Petersen and Mr. D’Antonio who were not disclosed as experts in this litigation.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico admits that whatever interest New Mexico may have below Elephant Butte Reservoir, it is limited to the rights that exist pursuant to the EBID contracts. Lopez 30(b)(6) Depo., 9/18/2020, at TX_MSJ_001142-001145, 20:4-23:16, 25:17-26:10. New Mexico admits that New Mexico’s interests below Elephant Butte Reservoir are strictly limited to the four corners of the 1937 contract between EBID and the United States and the 1938 contract between EBID, the United States, and EP#1. Lopez 30(b)(6) Depo., 9/18/2020, at TX_MSJ_001147-001148, 25:17-26:10. New Mexico concedes that it cannot, in any way, control or affect that contract. D’Antonio Depo., 8/14/2020, at TX_MSJ_000867, 93:1-11, 24-25 (“The contracts are in place, the project is under Reclamation law and it runs”; “New Mexico’s not involved to administer the contract water, no.”), 94:2-13 (“New Mexico does not administer the surface water that’s under contract . . . we don’t administer on a day-to-day basis any of the water that’s meant for the project.”), 95:21-96:7. New Mexico admits that the use, place of use, timing of delivery, and total amount of water is absolutely limited by these contracts. D’Antonio Depo., 8/14/2020, at TX_MSJ_000875, 000879-000880, 145:13-18, 149:6-150:2. Until this litigation, New Mexico never argued that it had an apportionment of Rio Grande water below Elephant Butte Reservoir. In fact, in 1951, in prior Supreme Court litigation between New Mexico and Texas, John H. Bliss, the New Mexico State Engineer, on behalf of the state of New Mexico, stated unequivocally under oath: “The Rio Grande Compact does not attempt to make any apportionment between the New Mexico area and the Texas area below Elephant Butte Reservoir.”	Apportionment page 21	N/A
102	Apportionment No. 106	The RGCC and its Engineer Advisers regularly request information and receive briefings from Reclamation on Project operations, including operations below Elephant Butte.	NM-EX 202, Cortez Dep. (July 30, 2020) at 45:9-46:12; NM-EX 004, Schmidt-Petersen Decl. at ¶ 13; NM-EX 003, Lopez Decl. at ¶ 13; NM-EX 525, Email from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Kenneth Rice, Bureau of Reclamation (May 2, 2013); NM- EX 405, Facsimile from David Allen, El Paso Field Office, Bureau of Reclamation, to Darren Powell, Herman Settemeyer, et al. (June 25, 1996).	Yes. See NM Response to TX at: - page 24, 25, 56	From TX's 12/22/20 Filings: NM-EX-202: See General Objection #8. NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4). NM-EX-525: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-405: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602, 701.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	Apportionment page 21-22	N/A



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103	Apportionment No. 107	Reclamation reports to the RGCC every year about operations that are relevant to the Compact. As part of that report, Reclamation provides information about the operations of the Rio Grande Project.	See, e.g., NM-EX 512, Bureau of Reclamation, Calendar Year 2009 Report to the Rio Grande Compact Commission, at 59-67 (Mar. 2010); NM-EX 003, Lopez Decl. at ¶ 13; NM-EX 004, Schmidt-Petersen Decl. at ¶ 13; NM-EX 405, Facsimile from David Allen, El Paso Field Office, Bureau of Reclamation, to Darren Powell, Herman Settemeyer, et al. (June 25, 1996); NM-EX 410, Fascimile from Steve Vandiver, Engineer Adviser, State of Colorado, to Ken Maxey, Albuquerque Area Manager, Bureau of Reclamation, and Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation (Aug. 2, 2002).	Yes. See NM Response to TX at: - page 24, 25, 56	From TX's 12/22/20 Filings: NM-EX-512: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4). NM-EX-405: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-410: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602, 701.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	Apportionment page 22	N/A
104	Apportionment No. 108	The RGCC conducts Compact accounting on an annual basis. Part of the Compact accounting includes a report on the Project Storage and Releases. That accounting tracks both the releases of Usable Water to water users in both States to satisfy irrigation demands, and the accrued departure of the releases from the Compact's normal release of 790,000 acre-feet per year.	See, e.g., NM-EX 501, Rio Grande Compact Commission, Report of the Rio Grande Compact Commission 2005, at 20 (Mar. 23, 2006). See also NM-EX 004, Schmidt-Petersen Decl. at ¶ 14; NM-EX 003, Lopez Decl. at ¶ 14.	Yes. See NM Response to TX at: - page 24, 25, 56	From TX's 12/22/20 Filings: NM-EX-501: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-003: See General Objection #2; Fed. R. Civ. P. 56(c)(4). NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602, 701.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. There is no evidence cited in support of this “fact.” New Mexico’s reference to “See, e.g.” does not constitute supporting evidence.	Apportionment page 22	N/A
105	Apportionment No. 109	“Reclamation interprets this accrued departure from normal release [Compact accounting provision] as a measure of how the Rio Grande Project is complying with its obligation to meet yearly demand from the water users of the Rio Grande Project and at the same time comply with the Rio Grande Compact intent to recognize a yearly average of 790,000 AF release from project storage to satisfy water users” below Elephant Butte.	NM-EX 411, Letter from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to William A. Paddock, 2 (Sept. 11, 2002).	Yes. See NM Response to TX at: -page 25, 56	From TX's 12/22/20 Filings: NM-EX-411: General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The evidence (NM-EX-411) does not support the asserted fact. New Mexico quotes the document correctly but adds “below Elephant Butte” after the quote in the asserted fact. Immediately following the quoted text, however, Exhibit NM-EX-411 states “within the ‘Texas portion’ of the Compact.” See NM-EX-411 at 2.	Apportionment page 22	N/A
106	Apportionment No. 110	The releases from Project Storage are tracked so that the Compact Commissioner from each respective State is able to understand the amount of Project water that users in his or her State are entitled to.	NM-EX 004, Schmidt-Petersen Decl. at ¶ 14; NM-EX 003, Lopez Decl. at ¶ 13.	Yes. See NM Response to TX at: -page 25, 56	From TX's 12/22/20 Filings: NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4). NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602, 701. The stated “facts” constitute improper legal conclusions in whole or in part.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. New Mexico misstates and mischaracterizes the cited evidence. The Schmidt-Petersen declaration states that project releases are accounted and reported “so that the Compact Commissioner from each respective State is able to understand the amount of Project water that users in his or her State received in the previous year.” (NM-EX 004) (emphasis added). Schmidt-Petersen did not state anything about “entitlement to water.” NM-EX 004, Schmidt-Petersen Decl. paragraph 14. The Lopez declaration states that the RGCC and Engineer Advisers request information and receive briefings from Reclamation on Project operations. NM-EX 003, Lopez Decl. paragraph 13.	Apportionment page 22	Opp. to US - page 63

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
107	Apportionment No. 111	The RGCC acts or speaks in a number of forms, including through resolutions, all of which must have unanimous agreement.	NM-EX 002, D'Antonio Decl. at ¶ 14, NM-EX 003, Lopez Decl. at ¶ 15.	Yes. See NM Response to TX at: -page 25, 56	From TX's 12/22/20 Filings: NM-EX-406: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-002: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 401, 602, 701. NM-EX-408: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-528: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact."	Apportionment page 22-23	Opp. to US - page
107	Apportionment No. 111	Through unanimous resolutions, the RGCC has taken the following relevant positions: a. The State of New Mexico has a Compact apportionment in southern New Mexico below Elephant Butte, as recognized in the citations below: i. "[O]ver half of New Mexico's population is located within the Rio Grande basin and depends on New Mexico's allocation of Rio Grande water under the Rio Grande compact."	a. (i) NM-EX 406, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Regarding the Need for Careful Evaluation of the Water Supply and Socioeconomic Impacts of Any Designation of Critical Habitat for the Rio Grande Silvery Minnow (Mar. 25, 1999).	Yes. See NM Response to TX at: -page 25, 56	NM-EX-406: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact."	Apportionment page 22-23	N/A
107	Apportionment No. 111	ii. "[A]ll Rio Grande water allocated to New Mexico both upstream and downstream from Elephant Butte Reservoir is fully appropriated under New Mexico state law."	a. (ii) Id. (emphasis added).	Yes. See NM Response to TX at: -page 25, 56	NM-EX-406: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact."	Apportionment page 22-23	N/A
107	Apportionment No. 111	iii. "[T]he waters of the Rio Grande Project are used to . . . provide a water supply for Southern New Mexico and Texas downstream of Elephant Butte Reservoir."	a. (iii) NM-EX 408, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Regarding the Development of an Appropriate Methodology for Determining the Annual Allocation of Usable Water in Rio Grande Project Storage (Mar. 21, 2002) (emphasis added).	Yes. See NM Response to TX at: -page 25, 56	NM-EX-408: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact."	Apportionment page 22-23	N/A
107	Apportionment No. 111	b. The operations and accounting of the Project have the potential to impact New Mexico's Compact apportionment.	b. Id. ("[T]he dissemination of inaccurate allotments [by Reclamation] causes unnecessary hardship to the water users of Southern New Mexico and Texas along the Rio Grande downstream of Elephant Butte Reservoir") (emphasis added); NM-EX 002, D'Antonio Decl. at ¶ 14; NM-EX 003, Lopez Decl. at ¶ 15.	Yes. See NM Response to TX at: -page 25, 56	NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact."	Apportionment page 22-23	N/A
107	Apportionment No. 111	c. The Project is "required to be operated in compliance with the Rio Grande Compact."	c. NM-EX 528, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Regarding Temporary Modification of Operations at El Vado Reservoir in New Mexico during April, May, and June 2015 (Mar. 24, 2015); see also NM-EX 002, D'Antonio Decl. at ¶ 14; NM-EX 003, Lopez Decl. at ¶ 15.	Yes. See NM Response to TX at: -page 25, 56	NM-EX-528: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusions summarized by New Mexico (as facts) in "a." and "b." The evidence (NM-EX-528) does not support the asserted fact. New Mexico, partially quoting Exhibit NM-EX-528, states "The Project is 'required to be operated in compliance with the Rio Grande Compact.'" But, Exhibit NM-EX-528 states only that "... El Vado Reservoir is a post-1929 reservoir and is required to be operated in compliance with the Rio Grande Compact."	Apportionment page 22-23	N/A

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
108	Apportionment No. 112	To address the potential for Project operations to impact New Mexico's (and Texas's) Compact apportionment, the RGCC has taken at least these three actions by resolution: a. First, the RGCC unanimously "request[ed] that the Bureau of Reclamation work cooperatively with the Engineer Advisers to develop procedures for determining the annual allotments of water supply in accordance with the Rio Grande Compact."	a. NM-EX 408, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Regarding the Development of an Appropriate Methodology for Determining the annual Allocation of Usable Water in Rio Grande Project Storage (Mar. 21, 2002); see also NM-EX 002, D'Antonio Decl. at ¶ 15, NM-EX 003, Lopez Decl. at ¶ 16.	Yes. See NM Response to TX at: - page 25, 33, 56	From TX's 12/22/20 Filings: NM-EX-408: See General Objection 8; Fed. R. Evid. 801(c), hearsay. NM-EX-002: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602, 802. The statement is irrelevant, not within Mr. D'Antonio's personal knowledge, and constitutes impermissible hearsay. NM-EX-003: See General Objection #2; Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602, 802. The statement is irrelevant, not within Mr. Lopez's personal knowledge, and constitutes impermissible hearsay. NM-EX-408 speaks for itself.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusion summarized by New Mexico (as fact) in its opening paragraph.	Apportionment page 23-24	N/A
108	Apportionment No. 112	b. Second, the RGCC entered into a memorandum of understanding ("MOU") with Reclamation to "conduct a Compact water accounting documentation project." The purpose of the MOU was "to clarify and formally articulate the details of the duties, roles and responsibilities of each party for the water accounting, reporting, and documentation of the waters of the Rio Grande Basin above Fort Quitman, Texas, in accordance with the Compact."	b. NM-EX 407, Memorandum of Understanding between the Rio Grande Compact Commission and the United States Bureau of Reclamation, 2 (Mar. 21, 2002); see also NM-EX 002, D'Antonio Decl. at ¶ 15, NM-EX 003, Lopez Decl. at ¶ 16.	Yes. See NM Response to TX at: - page 25, 33, 56	NM-EX-002: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602, 802. The statement is irrelevant, not within Mr. D'Antonio's personal knowledge, and constitutes impermissible hearsay. NM-EX-003: See General Objection #2; Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602, 802. The statement is irrelevant, not within Mr. Lopez's personal knowledge, and constitutes impermissible hearsay. NM-EX-408 speaks for itself. NM-EX-407: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusion summarized by New Mexico (as fact) in its opening paragraph.	Apportionment page 23-24	N/A
108	Apportionment No. 112	c. Third, the RGCC unanimously "request[ed] those federal agencies that operate water-related facilities within the Rio Grande basin to advise the Rio Grande Compact Commission prior to changing the operation of any of those facilities and when deemed necessary by the Rio Grande Compact Commission, seek its unanimous consent for changes prior to implementation."	c. NM-EX 413, Rio Grande Compact Commission, Resolution of the Rio Grande Compact Commission Concerning Federal Agency Operations of Their Water-Related Facilities on the Rio Grande Compact Accounting (Mar. 25, 2004); NM-EX 002, D'Antonio Decl. at ¶ 15, NM-EX 003, Lopez Decl. at ¶ 16.	Yes. See NM Response to TX at: - page 25,33, 56	NM-EX-002: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602, 802. The statement is irrelevant, not within Mr. D'Antonio's personal knowledge, and constitutes impermissible hearsay. NM-EX-413: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. The cited evidence does not support the stated legal conclusion summarized by New Mexico (as fact) in its opening paragraph.	Apportionment page 23-24	N/A
109	Apportionment No. 113; similar language in Full Supply No. 1	The Court held in this case that "the Compact . . . implicitly . . . incorporates the Downstream Contracts by reference."	Texas v. New Mexico, 138 S. Ct. at 959.	Yes. See NM Response to TX at: - page 16, 56, 59	From TX's 12/22/20 Filings: Texas v. New Mexico , 138 S. Ct. 954, 957(2018): Case law/legal opinions do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Texas disputes the application of the Supreme Court opinion, or portion thereof, as a "fact" for purposes of summary judgment. Notably, the Supreme Court ruling in question did not arise from an evidentiary hearing. The Court's opinion should only be considered in the context of the parties' legal arguments	Apportionment page 24; Full supply page 2, 13	N/A
109	Apportionment No. 113; similar language in Full Supply No. 1	It noted that the "Compact is inextricably intertwined with the Rio Grande Project and the Downstream Contracts."	Texas v. New Mexico, 138 S. Ct. at 959.	Yes. See NM Response to TX at: - page 16, 56, 59	Texas v. New Mexico, 138 S. Ct. 954, 957(2018): Case law/legal opinions do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Texas disputes the application of the Supreme Court opinion, or portion thereof, as a "fact" for purposes of summary judgment. Notably, the Supreme Court ruling in question did not arise from an evidentiary hearing. The Court's opinion should only be considered in the context of the parties' legal arguments	Apportionment page 24; Full supply page 2, 13	N/A
110	Apportionment No. 114; similar language in Full Supply No. 1	The Court further held that "the United States might be said to serve, through the Downstream Contracts as a sort of agent of the Compact, charged with assuring that the Compact's equitable apportionment to Texas and part of New Mexico is, in fact, made."	Texas v. New Mexico, 138 S. Ct. at 959 (emphasis added; internal quotation marks omitted).	Yes. See NM Response to TX at: - page 16, 56	From TX's 12/22/20 Filings: Texas v. New Mexico, 138 S. Ct. 954, 957(2018): Case law/legal opinions do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Texas disputes the application of the Supreme Court opinion, or portion thereof, as a "fact" for purposes of summary judgment. Notably, the Supreme Court ruling in question did not arise from an evidentiary hearing. The Court's opinion should only be considered in the context of the parties' legal arguments.	Apportionment page 24; Full supply page 2, 13	N/A



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111	Full Supply No. 2	In the Downstream Contracts, and in particular in the 1938 Downstream Contract, “the federal government promised to supply” Project water to the New Mexico water district Elephant Butte Irrigation District (“EBID”) and to the Texas water district EPCWID (collectively, the “Districts”) in accordance with their irrigable acres within the Project—“roughly 57% for New Mexico and 43% for Texas.”	Texas v. New Mexico, 138 S. Ct. at 957.	<b>Yes. See NM Response to TX at: - page 16, 56, 66</b>	<b>From TX's 12/22/20 Filings:</b> <i>Texas v. New Mexico</i> , 138 S. Ct. 954, 957(2018); Case law/legal opinions do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Texas disputes the application of the Supreme Court opinion, or portion thereof, as a “fact” for purposes of summary judgment. Notably, the Supreme Court ruling in question did not arise from an evidentiary hearing. The Court’s opinion should only be considered in the context of the parties’ legal arguments. New Mexico’s statement also mischaracterizes the Court’s opinion.	Full Supply page 2, 13	N/A
112	N/A	Water rights associated with the Project comprise the largest surface water rights in the Lower Rio Grande (“LRG”). In addition to Project water rights, there are a few pre-Project surface water rights in the New Mexico part of the LRG. New Mexico water laws and regulation protect the senior water rights of the Rio Grande Project.	See NM-EX 006, Barroll 2d Decl. at ¶ 76; see also NM-EX 007, D’Antonio 2d Decl. at ¶ 37.	<b>Yes. See NM Response to TX at: - page 33, 56</b>	NM-EX-006, 007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. Fed. R. Evid. 704.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. Texas's Motion for Summary Judgment does not materially address state water rights in the Lower Rio Grande or New Mexico's water rights law. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
113	N/A	The actual irrigated acreage within the Project in 1938 was approximately 140,000 acres, about 20,000 acres less than the full irrigated acreage authorized in the 1938 Downstream Contract. The irrigated area within the Project increased gradually through the 1940s, reaching its maximum extent of about 160,000 acres in the early 1950s. It has gradually declined in both New Mexico and Texas ever since. However, the actual irrigated acreage within the Project fluctuates from year to year based on a number of factors, including water supply, planting and fallowing decisions by individual farmers, and urbanization.	See NM-EX 012, Sullivan Decl. at ¶ 44; see also NM- EX 112, Spronk Rep. at 43 & Fig. 5-4.	<b>Yes. See NM Response to TX at: - page 56, 61</b>	NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico cites CSMF #113 and its supporting evidence in its opposing to Texas's Motion for Partial Summary Judgment relating to its counterclaims against Texas (see page 56) and not in response to facts stated in Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp. to US - page 51 - page 51
114	N/A	The total amount of irrigated acreage in New Mexico today is approximately 75,000 acres. Taking this change into account, the total volume of irrigation water applied in the New Mexico portion of the Project is consistent with the irrigation demand in New Mexico during the 1940s and 1950s.	See NM-EX 006, Barroll 2d Decl. at ¶¶ 24-25; cf. NM-EX 432, Narenda N. Gunaji, Engineering Experiment Station, New Mexico State University, Groundwater Conditions in the Elephant Butte Irrigation District, at 3, 19 (1961) (reporting per-acre demand figures during the 1950s); NM-EX 343, C.S. Conover, Preliminary Memorandum on Groundwater Supplies for Elephant Butte Irrigation District, New Mexico, at 6 (Sept. 1947) (reporting demand figures for the 1940s).	<b>Yes. See NM Response to TX at: - page 56</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-432: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico cites CSMF #114 and its supporting evidence in its opposition to Texas's Motion for Partial Summary Judgment relating to its counterclaims against Texas ( <i>see</i> NM Response at 56) and not in response to facts stated in Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp. to US - page 51 - page 51 - page 51, 52
115	Full Supply No. 3	The Project is operated by the [Reclamation]. The operations of the Project include the allocation and delivery of Project water stored in Elephant Butte and Caballo reservoirs to the Districts and to Mexico.	NM-EX 001, Barroll Decl. at ¶ 14; NM-EX 003, Lopez Decl. at ¶ 19; see also e.g., NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 3–4 (Sep. 30, 2016).	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX 529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 003: <i>See</i> General Objection #2.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Full Supply page 2	Opp. to US - page 62
116	Notice No. 9	The Rio Grande Project is a federal Reclamation Project, therefore neither Texas nor New Mexico have a direct role in the operation of the Project.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 63:18-69:2; NM-EX 211, Gordon Dep. (July 14, 2020) at 89:4-11, 172:13-22.	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX 202, 211: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Notice page 3, 16, 18	N/A
117	Notice No. 10	Specifically, although New Mexico retains administrative jurisdiction over the surface water of the Rio Grande Project, the New Mexico State Engineer has no involvement in day-to- day Project operations, including orders and deliveries.	NM-EX 206, D’Antonio Dep. (Aug. 14, 2020) at 93:12-96:7.	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX 206: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Notice page 3, 16	N/A

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118	Notice No. 2	Reclamation operates Elephant Butte Reservoir as part of the principal storage infrastructure for the Rio Grande Project.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 56:20- 58:3.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX 202: See General Objection #8. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited testimony does not support the statement in the Motion.	Notice page 2	N/A
119	Apportionment No. 53	At the time the Compact was executed, 88,000 authorized Project acres were situated within EBID in New Mexico, and 67,000 authorized Project acres were situated in EPCWID in Texas.	NM-EX 328, Frank B. Clayton, Rio Grande Compact Commissioner, State of Texas, to Sawnie B. Smith (Oct. 4, 1938).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings:	From TX's 12/22/20 Filings: Subject to the stated objection, undisputed.	Apportionment page 10; Apportionment page 30; Apportionment page 33; Apportionment page 39; Apportionment page 53;	N/A
119	Apportionment No. 53	Thus, approximately 57% of Project acreage was located in New Mexico, and 43% of Project acreage was located in Texas.	NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Final Environmental Impact Statement, at 4 (Sept. 30, 2016).	Yes. See NM Response to TX at: - page 56	NM-EX-529: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objection, undisputed.	Apportionment page 10; Apportionment page 30; Apportionment page 33; Apportionment page 39; Apportionment page 53; Apportionment page 40	N/A
120	Notice No. 21	In operation of the Rio Grande Project, Reclamation is responsible to control releases of Project supply from Elephant Butte and Caballo reservoirs to assure delivery of all ordered water to the canal diversions. This function includes monitoring the river to determine gains and losses throughout the river reaches between stream gages.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 34:12-35:5.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX 202: See General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The cited “evidence” does not stand for the stated proposition.	Notice page 4, 16	N/A
121	Apportionment No. 50	The Project beneficiary in New Mexico is [EBID]. EBID is a New Mexico entity created by New Mexico statute and subject to New Mexico law.	See Motion of Elephant Butte Irrigation District for Leave to Intervene, and Memorandum and Points of Authority, 2 (Dec. 3, 2014); see also NM-EX 302, Elephant Butte Water Users Association, Articles of Incorporation (Dec. 22, 1904); NM-EX 112, Stevens Rep. at 18; NM-EX 111, Miltenberger Rep. at 9.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: Motion of Elephant Butte Irrigation District for Leave to Intervene, and Memorandum and Points of Authority, 2 (Dec. 3, 2014): The cited EBID motion is not supported by evidence. As such, it does not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c); the material cited to support the “fact” cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c). NM-EX-112: See General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-111: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in that is mischaracterizes the cited “evidence;” the “evidence” does not stand for the stated proposition; and contains an improper legal conclusions by stating that EBID is a “New Mexico entity,” “subject to New Mexico law.” The lack of definitions and scopes for the terms used render the statements objectionable.	Apportionment page 9; Apportionment page 39	N/A
122	Apportionment No. 51	The Project beneficiary in Texas is [EPCWID]. EPCWID is a Texas entity created by Texas statute and subject to Texas law.	See Motion of El Paso County Water Improvement District No. 1 for Leave to Intervene as Plaintiff, Complaint in Intervention, and Memorandum in Support of Motion to Intervene as Plaintiff, 1-3 (Apr. 22, 2015); see also NM-EX 304, El Paso Valley Water Users' Association, Articles of Incorporation (Mar. 31, 1905); NM-EX 112, Stevens Rep. at 18; NM-EX 111, Miltenberger Rep. at 9.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: Motion of El Paso County Water Improvement District No. 1 for Leave to Intervene as Plaintiff, Complaint in Intervention, and Memorandum in Support of Motion to Intervene as Plaintiff, 1-3 (Apr. 22, 2015); The cited EP #1 motion is not supported by evidence. As such, it does not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c); the material cited to support the “fact” cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c). NM-EX-112: See General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-111: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in that is mischaracterizes the cited “evidence;” the “evidence” does not stand for the stated proposition; and contains an improper legal conclusions by stating that EP#1 is a “Texas entity,” “subject to Texas law.” The lack of definitions and scopes for the terms used render the statements objectionable.	Apportionment page 9; Apportionment page 39	N/A

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123	Notice No. 3	Once delivered to the Elephant Butte Reservoir, Project water is allocated to the Rio Grande Project beneficiaries in southern New Mexico and in Texas.	See NM-EX 220, Miltenberger Dep. (June 8, 2020) at 38:22-39:6. The Project water users are located in [EBID] and [EPCWID] (referred to jointly as “Districts”). See Motion of Elephant Butte Irrigation District for Leave to Intervene, and Memorandum and Points of Authority, 2 (Dec. 3, 2014); Motion of El Paso County Water Improvement District No. 1 for Leave to Intervene as Plaintiff, Complaint in Intervention, and Memorandum in Support of Motion to Intervene as Plaintiff, 1-3 (Apr. 22, 2015); NM-EX 112, Stevens Rep. at 18; NM-EX 111, Miltenberger Rep. at 9.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX 220: See General Objection #8. NM-EX 112, 111: See General Objection #7; Fed. R. Evid. 801(c), hearsay	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. Paragraph two mischaracterizes the cited “evidence”; the “evidence” does not stand for the stated proposition; and contains an improper legal conclusions.	Notice page 2	N/A
123	Notice No. 3	The Project water users are located in [EBID] and [EPCWID] (referred to jointly as “Districts”).	See Motion of Elephant Butte Irrigation District for Leave to Intervene, and Memorandum and Points of Authority, 2 (Dec. 3, 2014); Motion of El Paso County Water Improvement District No. 1 for Leave to Intervene as Plaintiff, Complaint in Intervention, and Memorandum in Support of Motion to Intervene as Plaintiff, 1-3 (Apr. 22, 2015); NM-EX 112, Stevens Rep. at 18; NM-EX 111, Miltenberger Rep. at 9.	Yes. See NM Response to TX at: - page 56	Motion of Elephant Butte Irrigation District for Leave to Intervene, and Memorandum and Points of Authority, 2 (Dec. 3, 2014): The cited EBID motion is not supported by evidence. As such, it does not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c); the material cited to support the “fact” cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c). Motion of El Paso County Water Improvement District No. 1 for Leave to Intervene as Plaintiff, Complaint in Intervention, and Memorandum in Support of Motion to Intervene as Plaintiff, 1-3 (Apr. 22, 2015): The cited EP#1 motion is not supported by evidence. As such, it does not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c); the material cited to support the “fact” cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c).	Subject to the stated objections, disputed in part. Paragraph two mischaracterizes the cited “evidence”; the “evidence” does not stand for the stated proposition; and contains an improper legal conclusions.	Notice page 2	N/A
124	N/A	Although the Compact defines a “normal release” from Project Storage of 790,000 acre- feet, the release has been less than 790,000 acre-feet/year in all but 13 years since 1938. Further, many of those years in which the release exceeded 790,000 acre-feet/year were years in which a spill occurred.	See NM-EX 008, Lopez 2d Decl. at ¶ 19; see also NM-EX 122, Sullivan & Welsh 2d Rep. (“Spronk Rep.”) at 41, 180.	Yes. See NM Response to TX at: - page 56	NM-EX-008: See General Objection #2. NM-EX-122: See General Objection #1; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding "normal release" does not materially respond to an argument made in Texas's Motion for Partial Summary Judgment and, in part, amounts merely to New Mexico and Mr. Lopez's legal opinion regarding the meaning of "normal release." New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
125	Similar language in Full Supply no. 4	The term “Project Supply” means the Usable Water released from Caballo Dam, plus Project return flows and inflows occurring below Caballo Dam, that can be allocated and delivered to the beneficiaries of the Project—namely EBID and EPCWID—and to Mexico. Not all water delivered into Elephant Butte Reservoir constitutes “Project Supply” because some water evaporates in storage, constitutes water in storage other than Useable Water (e.g., Credit Water), or may be used to satisfy pre-Compact water rights.	See NM-EX 006, Barroll 2d Decl. at ¶ 10; see also NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 3–5 (Sept. 30, 2016).	Yes. See NM Response to TX at: - page 16, 56	From TX's 12/22/20 Filings: NM-EX 001: See General Objection #1 and the definition of “Project supply” for purposes of the Compact is a legal conclusion, not an undisputed fact. The definition of “Project supply” is a Compac trelated question that is outside Dr. Barroll’s area of expertise.  NM-EX 529: See General Objection #3; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. The definition of “Project supply” for purposes of the Compact is a legal conclusion, not an undisputed fact. The definition of “Project supply” is a Compactrelated question that is outside Dr. Barroll’s area of expertise. NM-EX529 does not support declarant’s definition.	Full Supply page 3, 8, 14	N/A



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126	N/A	Project return flows form part of Project Supply. Project return flows available for use within the Project were historically generated within the Rincon Valley in New Mexico, the Mesilla Valley in New Mexico and Texas, and the El Paso Valley above the Tornillo heading in Texas. Project return flows that are associated with irrigation, by and large, return through Project drains and wasteways.	See NM-EX 006, Barroll 2d Decl. at ¶¶ 46-47, 49; see also NM-EX 100, Barroll Rep. at 26-30; Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation 100 (1937) (produced at TX_MSJ_000132); NM-EX 122, Spronk Rep. at 24-32; NM-EX 424, C.S. Conover, Ground-Water Conditions in the Rincon and Mesilla Valleys and Adjacent Areas in New Mexico, at 45-50 (1954).	Yes. See NM Response to TX at: - page 16, 56	NM-EX-100, 122: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #126 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
127	N/A	Return flows vary spatially and temporally depending on many factors, including hydrologic conditions and Project operations.	See NM-EX 012, Sullivan Decl. at ¶¶ 26, 35.	Yes. See NM Response to TX at: - page 56 )	n/a	The fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #127 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#127 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (see NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
128	N/A	The flow in Project drains is a component of total Project return flows. Drain flows comprise a number of sources of water, including groundwater seepage, wastewater, tailwater, and on-farm runoff. Drain flows vary throughout the year depending on many factors, including the timing and volume of surface water deliveries and irrigation applications, weather conditions, and other factors.	See NM-EX 012, Sullivan Decl. at ¶¶ 30, 31, 34; see also NM-EX 122, Spronk Rep. at 225; NM-EX 123, Spronk Reb. Rep. at 170-71.	Yes. See NM Response to TX at: - page 56	NM-EX-122, 123: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #128 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#128 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment (see NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
129	Notice No. 4	Project Allocations are the amounts of Project Supply that each District is entitled to order each year from Project supply and the amount Mexico is entitled to receive by treaty.	NM-EX 001, Barroll Decl. at ¶ 18; NM-EX 307, Distribution of the Waters of the Rio Grande, Mex.-U.S., May 21, 1906, 34 Stat. 2953; NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Final Environmental Impact Statement, 4 (Sept. 30, 2016).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX 001: Texas objects to Barroll paragraph 18's definition of "Project Allocations" to the extent it incorporates paragraph 15's definition of "Project Supply," which is a legal conclusion and not a basis for "undisputed facts." NM-EX 529: See General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	Notice page 2	N/A

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130	N/A	Reclamation determines Project Allocations before the beginning of the irrigation season and updates the Project Allocations as necessary throughout the season.	See NM-EX 006, Barroll 2d Decl. at ¶ 11.	Yes. See NM Response to TX at: - page 56	NM-EX-006: Fed. R. Evid. 401, 402; the cited portion of the document is irrelevant because it does not stand for the "fact(s)" stated. The cited portion of the document does not mention "Reclamation."	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #130 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#130 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment ( <i>see</i> NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
131	Apportionment No. 67	Historically, Reclamation calculated and declared the allocation of Project supply available to lands in New Mexico, lands in Texas, and Mexico on the basis of water in storage available for release and on historical return flows to the Rio Grande.	NM-EX 506, Cortez Aff. at ¶ 7 (Apr. 20, 2007); NM-EX 200, Barroll Dep. (Aug. 10, 2020) at 393:3-5; NM-EX 219, Lopez Dep. (Aug. 21, 2020) at 40:13-20; NM-EX 107, Lopez Rep. at 5-6.	Yes. See NM Response to TX at: - page 16, 56	<b>From TX's 12/22/20 Filings:</b> NM-EX-506: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay; Fed. R. Evid. 401, 402. The cited portion of the document is irrelevant because it does not stand for the "fact(s)" stated. NM-EX-200: <i>See</i> General Objection #8. NM-EX-219: <i>See</i> General Objection #8. NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Apportionment page 14; Apportionment page 30	N/A
132	Apportionment No. 60	The allocation of Project supply available for lands in the two States was historically equally divided to all Project lands on an acre foot per acre basis.	NM-EX 506, Cortez Aff. at ¶ 8 (Apr. 20, 2007); NM-EX 108, Lopez Reb. Rep. at 7-9; NM-EX 210, Ferguson Dep. (Feb. 20, 2020) at 240:25-241:5; NM-EX 214, King Dep. (May 18, 2020) at 115:13-25.	Yes. See NM Response to TX at: - page 56	<b>From TX's 12/22/20 Filings:</b> NM-EX-506: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-108: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. NM-EX-210: <i>See</i> General Objection #8. NM-EX-214: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. New Mexico's reference in paragraphs 60, 63 and 64 of the NM MSJ on Apportionment regarding how Project supply was historically allocated based on an equal acre foot per acre basis is not relevant to apportionment of Rio Grande water under the Compact. This allocation applies solely to Project water already stored in Elephant Butte Reservoir and inflows to the Rio Grande downstream of the reservoir, whereas the Compact applies to Rio Grande deliveries to Elephant Butte Reservoir. Project allocations made to respond to orders by the District water users do not form the basis of Texas's Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1906 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Declaration of Robert J. Brandes, P.E., Ph.D. in Support of the State of Texas's Oppositions to the State of New Mexico's Motions for Partial Summary Judgment and Briefs in Support (Brandes Dec. in Opp. to NM) at TX_MSJ_007312, paragraphs 1 – 9, 25-27.	Apportionment page 11; Apportionment page 30; Apportionment page 39 ; Apportionment page 40	N/A
133	N/A	Reclamation releases Usable Water from Project Storage for delivery to Project beneficiaries and to Mexico as part of the operations of the Rio Grande Project. Releases are made in response to orders by the Districts, and in accordance with each year's schedule of deliveries to Mexico.	See NM-EX 006, Barroll 2d Decl. at ¶ 9; see also NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 3-5 (Sept. 30, 2016).	Yes. See NM Response to TX at: - page 56	NM-EX-529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #133 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#133 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment ( <i>see</i> NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A

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134	Notice No. 6	The Rio Grande Compact incorporates the Rio Grande Project as the mechanism by which water users in Texas (EPCWID) receive the State's equitable apportionment of the waters of the Rio Grande.	See NM-EX 212, Gordon Dep. (July 15, 2020) at 14:22-16:10; Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); see also First Interim Report of the Special Master, 194-95 (Feb. 9, 2017); Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); Reply Brief for the United States on Exceptions by the States of New Mexico and Colorado to the First Interim Report of the Special Master, 18 (July 2017).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX 212: See General Objection #8. Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); see also First Interim Report of the Special Master, 194-95 (Feb. 9, 2017); Texas's Reply to Exceptions to First Interim Report of Special Master, 40 (July 28, 2017); Reply Brief for the United States on Exceptions by the States of New Mexico and Colorado to the First Interim Report of the Special Master, 18 (July 2017): Language in a legal brief prepared by the party's attorneys supporting a motion that is not based on evidence, do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c). The pleadings discussed by New Mexico here are not supported by evidence and, as such, are inadmissible and irrelevant for purposes of summary judgment. Fed. R. Civ. P. 56(c); Fed. R. Evid. 401. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	Notice page 2, 8	N/A
135	N/A	[Duplicate (please refer to NM-CSMF ¶ 125)].		Yes. See NM Response to TX at: - page 56			N/A	N/A
136	[Full Supply No. 7].	Project Allocations are the amount of Project supply each District (EBID and EPCWID) is entitled to order (take) from the Project, each year, and the amount Mexico is entitled to receive by Treaty.	NM-EX 001, Barroll Decl., ¶ 18; NM-EX 003, Lopez Decl., ¶ 23; NM-EX 307, Convention between the United States and Mexico: Equitable Distribution of the Waters of the Rio Grande (May 21, 1906); NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 4 (Sep. 30, 2016).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX 001: Texas objects to Barroll paragraph 18's definition of "Project Allocations" to the extent it incorporates paragraph 15's definition of "Project Supply," which is a legal conclusion and not a basis for "undisputed facts." NM-EX 003: See General Objection #2. NM-EX 529: See General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). Fed. R. Evid. 704: The statement includes impermissible legal conclusions.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	Full Supply page 3	N/A



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137	N/A	The Project has changed significantly since 1938. Major changes to the Project include but are not limited to: completion of the Rectification and Canalization projects, proliferation of groundwater wells in both states and in Mexico, Project acreage buildout then reduction in irrigated acreage, changes in on-farm irrigation efficiencies, changes in crop mix, urbanization of Project area, growth of municipal water demands with significant amounts of that demand being supplied by the Project, significant Project accounting changes, infrastructure changes (e.g., construction of the American Canal and its Extension), designation of wastewater treatment plant treated effluent as non-Project water, transfer of ownership and operation of Project infrastructure from Reclamation to the Districts, and significantly modified Project operations under the 2008 Operating Agreement.	NM-EX 008, Lopez 2d Decl. at ¶ 33; see also NM-EX 107, Lopez Rep. at 12-13, 33, 35, 43-48, 62-65; NM-EX 100, Barroll Rep. at 53-60, Appx. C.	<b>Yes. See NM Response to TX at: - page 47, 48, 56</b>	NM-EX-008: <i>See</i> General Objection #2; Fed. R. Evid. 602. NM-EX-107, 100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding modifications to the Project and impacts on the Compact do not respond to facts stated in Texas's Motion for Partial Summary Judgment. The Compact, on its face, further does not address modifications to the Project. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	Opp. to US - page 61 - page 62
138	N/A	The cropping pattern in the Project has changed throughout the history of the Project.	NM- EX 006, Barroll 2d Decl. at ¶ 23; see also NM-EX 101, Barroll Reb. Rep. at 5.	<b>Yes. See NM Response to TX at: - page 56</b>	NM-EX-006: Fed. R. Evid. 602. NM-EX-101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #138 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#138 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment ( <i>see</i> NM Response 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
139	Apportionment No. 49	Under the Reclamation Act, Congress intended that water projects would be self- supporting, and each would generate sufficient revenue to cover the approximate costs of construction and operation and maintenance. Thus, Reclamation intended for the total estimated costs of the Rio Grande Project to be equitably borne by its beneficiaries.	NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Final Environmental Impact Statement, at 3 (Sept. 30, 2016); NM-EX 005, Stevens Decl. at ¶ 13.	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objection, undisputed.	Apportionment page 9; Apportionment page 39	N/A
140	Apportionment No. 52	To comply with the principle that the beneficiaries equitably bear the costs of the Project, Reclamation entered into contracts with EBID and EPCWID to establish the repayment obligations between the two districts based on the irrigable acreage within each district.	NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Final Environmental Impact Statement, at 4 (Sept. 30, 2016); e.g., NM-EX 308, Articles of Agreement between the United States of America, Elephant Butte Water Users Association, and El Paso Valley Water Users' Association (June 27, 1906) ("1906 Contract"); NM-EX 321, Contract between the United States and the El Paso County Water Improvement District No. 1 adjusting construction charges and for other purposes (Nov. 10, 1937) (reciting amendments to 1906 Contact); NM-EX 320, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges and for other purposes (Nov. 9, 1937) (same); NM-EX 326, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938) ("1938 Downstream Contract").	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay; Fed. R. Evid. 401, 402. The cited portion of the document is irrelevant because it does not stand for the "fact(s)" stated.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Apportionment page 9-10; Apportionment page 30; Apportionment page 39	Opp. to US - page 42

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141	Apportionment No. 57	In 1937 and 1938, Congress authorized the execution of amended repayment contracts with EBID and EPCWID. These contracts addressed the repayment obligations of the Districts and established a corresponding right of use to a proportion of the annual Project water supply during times of shortage based on an established irrigation acreage in each District: 57% to EBID in New Mexico, and 43% to EPCWID in Texas.	NM-EX 107, Lopez Rep. at 26-27; NM-EX 109, Lopez Suppl. Reb. Rep. at 6-7; see, e.g., NM-EX 308, Articles of Agreement between the United States of America, Elephant Butte Water Users Association, and El Paso Valley Water Users’ Association (June 27, 1906); NM-EX 321, Contract between the United States and the El Paso County Water Improvement District No. 1 adjusting construction charges and for other purposes (Nov. 10, 1937); NM-EX 320, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges and for other purposes (Nov. 9, 1937); NM-EX 324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938) (“1938 Downstream Contract”).	Yes. See NM Response to TX at: - page 16, 56	From TX's 12/22/20 Filings: NM-EX-107: See General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. NM-EX-109: See General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph is factually misleading. Congress authorized the execution of amended repayment contracts with EBID and EPCWID (or EP #1) in 1937, but it did not authorize the 1938 contract as such. The 1938 Downstream Contract was instead part of an effort by Reclamation, extending back to 1929, to fix the basis for repayments between the two districts. The districts themselves ultimately instigated this particular agreement to settle the issue. Miltenberger Declaration paragraphs 43-45 discuss the 1937 and 1938 Downstream Contracts. TX_MSJ_001585. The discussion is lengthy, and is incorporated herein by reference. See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 54 - 59.	Apportionment page 10-11; Apportionment page 30; Apportionment page 33; Apportionment page 39; Apportionment page 40	N/A
141	Apportionment No. 57	Collectively, these contracts are known as the “Downstream Contracts.”	N/A	Yes. See NM Response to TX at: - page 16, 56			Apportionment page 10-11; Apportionment page 30; Apportionment page 33; Apportionment page 39; Apportionment page 40	N/A
142	Apportionment No. 58; similar language in Notice No. 5; Full Supply No. 8	For example, the 1938 Downstream Contract quantified the authorized irrigable acreage within each district as 88,000 acres in EBID, and 67,000 acres in EPCWID (for a total of 155,000 Project acres). It goes on to state that in the event of a shortage of water, “the distribution of the available supply in such a year, shall so far as practicable, be made in the proportion of 67/155 [43%] thereof to the lands within [EPCWID], and 88/155 [57%] to the lands within [EBID].”	NM- EX 324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938); NM-EX 107, Lopez Rep. at 26-27; NM-EX 001, Barroll Decl. at ¶19.	Yes. See NM Response to TX at: - page 14, 16, 56	From TX's 12/22/20 Filings: NM-EX-107: See General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. NM-EX-001: See General Objection #1.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. This paragraph correctly quotes from the cited document but mischaracterizes the context and purpose of the 1938 Downstream Contract as discussed in paragraphs 54-59 of the Miltenberger Declaration. NM-EX 324. The discussion is lengthy, and is incorporated herein by reference. See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 54 - 60.	Apportionment page 11; Apportionment page 30; Apportionment page 33; ; Apportionment page 39; Apportionment page 40; Notice page 2; full supply page 3,4	Opp. to US - page 39 -page 39
143	N/A	The 1938 Downstream Contract is not itself a repayment contract between a district and Reclamation. Rather, it is a contract between the Districts and approved by Reclamation that reflects the Districts’ agreement concerning the revised 1937 repayment contracts.	See NM-EX 008, Lopez 2d Decl. at ¶ 29; see also NM-EX 321, Contract between the United States and the El Paso County Water Improvement District No. 1 adjusting construction charges and for other purposes (Nov. 10, 1937); NM-EX 320, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges and for other purposes (Nov. 9, 1937); NM-EX 324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938).	Yes. See NM Response to TX at: - page 56	NM-EX-008: The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #143 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#143 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment ( <i>see</i> NM Response 56). New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A

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144	N/A	The Downstream Contracts generally restrict use of available Project Supply to irrigation purposes on authorized Project lands. However, both the purpose of use and the place of use are subject to modification through execution of Miscellaneous Purposes contracts under the Sale of Water for Miscellaneous Purposes Act of 1920.	See NM-EX 008, Lopez 2d Decl. at ¶ 27; see also NM-EX 308, Articles of Agreement between the United States of America, Elephant Butte Water Users Association, and El Paso Valley Water Users' Association (June 27, 1906); NM-EX 321, Contract between the United States and the El Paso County Water Improvement District No. 1 adjusting construction charges and for other purposes (Nov. 10, 1937); NM-EX 320, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges and for other purposes (Nov. 9, 1937); NM-EX 324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938).	<b>Yes. See NM Response to TX at: - page 56</b>	NM-EX-008: The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #144 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#144 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment ( <i>see</i> NM Response at 56). New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. <b>As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
145	N/A	The Downstream Contracts do not address depletions, whether in New Mexico, Texas, or Mexico, that may affect available Project Supply.	See NM-EX 008, Lopez 2d Decl. at ¶ 28; see also NM-EX 308, Articles of Agreement between the United States of America, Elephant Butte Water Users Association, and El Paso Valley Water Users' Association (June 27, 1906); NM-EX 321, Contract between the United States and the El Paso County Water Improvement District No. 1 adjusting construction charges and for other purposes (Nov. 10, 1937); NM-EX 320, Contract between the United States and the Elephant Butte Irrigation District adjusting construction charges and for other purposes (Nov. 9, 1937); NM-EX 324, Contract Between Elephant Butte Irrigation District and El Paso County Water Improvement District No. 1 (Feb. 16, 1938).	<b>Yes. See NM Response to TX at: - page 56</b>	NM-EX-008: The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #145 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#145 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment ( <i>see</i> NM Response at 56). New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. <b>As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
146	Apportionment No. 54	At the time the Compact was signed, Reclamation had been operating the Project, in its entirety, as a single unit for over twenty years. During that time, the Project operated under Reclamation law.	See, e.g., NM-EX 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, 8 (1937); NM-EX 005, Stevens Decl. at ¶ 9.	<b>Yes. See NM Response to TX at: - page 17, 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-005: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 702: the statement in the Stevens Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. While this paragraph is correct that “[a]t the time the Compact was signed” the Project had been in operation for “over twenty years,” the cited sources in this paragraph do not provide support for the claim that the Project had been operated “as a single unit” nor do they explain what is meant by “under Reclamation law.” NM-EX-318 and NM-EX-005. NM-EX-005 paragraph 9 states that the Project was operated “as a single unit and pursuant to Reclamation law” but does not cite to documentary evidence. See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 52.	Apportionment page 10; Apportionment page 39; Apportionment page 40	Opp. to US  - page 62
147	Apportionment No. 55	In the years prior to the Compact being signed (1928-37), the average release from the Project was 780,640 acre-feet to satisfy irrigation demands on Project lands in both New Mexico and Texas.	NM-EX 323, United States Reclamation Service, Project History Rio Grande Project Year 1937, (1938).	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings: [Blank]</b>	<b>From TX's 12/22/20 Filings:</b> Undisputed.	Apportionment page 10; Apportionment page 30; Apportionment page 39; Apportionment page 40	N/A
148	Apportionment No. 56	In the years prior to the Compact being signed, the Project would set an equal allotment for each Project acre to satisfy irrigation demands.	NM-EX 323, United States Reclamation Service, Project History Rio Grande Project Year 1937 (1938).	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-202: See General Objection #2. NM-EX-100: See General Objection #1; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph is misleading. The cited primary document, United States Reclamation Service, Project History Rio Grande Project Year 1937 (1938) suggests that an equal allocation was set in 1937. NM-EX 323. However, it is unclear from that document if this was the practice in all years prior to the Compact. Even for 1937, the allotment basis was abandoned because individual water users had exceeded that amount in July. See Miltenberger Dec. in Opp. to NM at TX_MSI_007371, paragraphs 1 – 7, 53.	Apportionment page 10; Apportionment page 30; Apportionment page 39; Apportionment page 40	N/A



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<b>148</b>	Apportionment No. 56	The amount of water that was actually used on each acre depended on the amount called for by the individual farmers.	See NM- EX 202, Cortez Dep. (Vol. I) (July 30, 2020), 18:10-22; NM-EX 100, Barroll Rep. at 32.	<b>Yes. See NM Response to TX at: - page 56</b>	NM-EX-202: <i>See</i> General Objection #8. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. This paragraph is misleading. The cited primary document, United States Reclamation Service, Project History Rio Grande Project Year 1937 (1938) suggests that an equal allocation was set in 1937. NM-EX-323. However, it is unclear from that document if this was the practice in all years prior to the Compact. Even for 1937, the allotment basis was abandoned because individual water users had exceeded that amount in July. See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1 – 7, 53.	Apportionment page 10; Apportionment page 30; Apportionment page 39; Apportionment page 40	N/A
<b>149</b>	N/A	Prior to the Compact, return flow, generated both in New Mexico and Texas, was a substantial part of Project deliveries to EPCWID. EPCWID headings diverted return flows generated in the upper part of the El Paso Valley as well as municipal effluent generated by the City of El Paso. The percentages of return flows shown throughout Table 90 of the RGJI reflect the return flows occurring during the 1930-1936 period. At the time of the negotiation of the Compact, the return flows generated within the El Paso Valley were an integral part of Project Supply.	See NM-EX 006, Barroll 2d Decl. at ¶ 50; see also NM-EX-100, Barroll Rep. at 14, Appx. C, C8; NM-EX-101, Barroll Reb. Rep. at 25.	<b>Yes. See NM Response to TX at: - page 16, 37, 56, 58</b>	NM-EX-006: Fed. R. Evid. 602, Dr. Barroll lacks personal knowledge regarding the stated facts to the extent the stated facts purport to address the history of irrigation district activities in the Rio Grande Basin. NM-EX-100, 101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #149 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF #149 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment ( <i>see, e.g.</i> , NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp. to US - page 61 ("According to this definition, water that does not reach “the bed of the Rio Grande” does not even qualify as Project supply, and can therefore be used by EPCWID without being charged against its annual allocation, even if the water was on its way to the river. Based on that
<b>149</b>	N/A	The data in Table 90 of the RGJI reflects the diversion of return flows arising in the El Paso Valley.	See Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, at 13 (1937) (produced at TX_MSJ_000132); see also Figure 6, Texas's Motion for Partial Summary Judgment; Memorandum of Points and Authorities in Support Thereof (produced at TX_MSJ_000131 and 1579). See Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, at 100 (1937) (produced at TX_MSJ_000132); NM-EX 100, Barroll Rep. at Appx. C.; NM-EX 101, Barroll Reb. Rep. at 24-36; NM-EX 103 Barroll 2d Suppl. Reb. Rep. at 21-30.	<b>Yes. See NM Response to TX at: - page 16, 37 , 56, 58</b>	Rio Grande Joint Investigation: The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). NM-EX-100, 101, 103: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #149 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF#149 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment ( <i>see, e.g.</i> , NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp. to US - page 61 - page 62
<b>150</b>	N/A	The rectification of the Rio Grande in the El Paso Valley in 1938 separated the Rio Grande from the Tornillo, Hanson, and Guadalupe canal headings. From 1938-1980, water was diverted from EPCWID drains in the El Paso Valley into the Tornillo canal for use by EPCWID farmers.	See NM-EX 006, Baroll 2d Decl. at ¶ 51; see also NM-EX 100, Barroll Rep. Appx. C, C-21-28.	<b>Yes. See NM Response to TX at: - page 37, 56</b>	NM-EX-006: Fed. R. Evid. 602, Dr. Barroll lacks personal knowledge regarding the stated facts to the extent the stated facts purport to address the history of irrigation district activities in the Rio Grande Basin. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding water diversion from EPCWID drains do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #150 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF #150 in its opposition to Texas's Motion for Partial Summary Judgment only for its argument that pumping in Texas impacts New Mexico's apportionment ( <i>see, e.g.</i> , NM Response at 56). New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
<b>151</b>	Apportionment No. 59; Full Supply Nos. 9; similar language in Notice Nos. 12 (period from inception to 1951) and 15 (period from 1951 to 1979)	Until about 1979, Reclamation operated the entire Project, including delivering Project water to individual New Mexico and Texas farm headgates in response to farm orders, and Project farmers ordered water directly from Reclamation. Reclamation then determined what releases and diversions were needed to fulfill those orders, released water from Caballo reservoir, and diverted water at appropriate canal headings. Reclamation ditch riders then delivered the ordered water to individual farms.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 20:1-15, 58:6-59:11; NM-EX 001, Barroll Decl. at ¶ 20; NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Final Environmental Impact Statement, at 5 (Sept. 30, 2016).	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-202: <i>See</i> General Objection #8. NM-EX-529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Apportionment page 11; Apportionment page 30; Notice page 3, 16, 17; full supply page 4, 13	N/A

**EXHIBIT A**  
**THE STATE OF TEXAS'S OBJECTIONS AND RESPONSES TO THE STATE OF NEW MEXICO'S CONSOLIDATED STATEMENT**

<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
152	Apportionment No. 61	Prior to 1951, the Project enjoyed plentiful water supplies, and Reclamation allowed Project farmers to order water as they needed to irrigate their crops.	NM-EX 202, Cortez Dep. (July 30, 2020) at 18:16-19:15, 58:6-18.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-202: See General Objection #8. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. The testimony cited by New Mexico does not support that “Prior to 1951, the Project enjoyed plentiful water supplies.” NM-EX 202, Cortez Dep. (Vol. I) (July 30, 2020) 18:16-19:15, 58:6-18.	Apportionment page 11; Apportionment page 30	N/A
153	Apportionment No. 62	In 1951, drought forced Reclamation to limit per-acre allocations to Project lands, which it did by evaluating deliveries to lands from 1946 through 1950.	NM-EX 202, Cortez Dep. (July 30, 2020) at 19:1-20:4, 58:19-59:7; NM-EX 100, Barroll Rep. at 32.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-202: See General Objection #8.	From TX's 12/22/20 Filings: Subject to the stated objections, undisputed.	Apportionment page 11; Apportionment page 30; Apportionment page 39; Apportionment page 40	N/A
153	Apportionment No. 62	Reclamation in 1951 determined that 3.0241 acre-feet per acre constituted a full allocation to Project lands.	NM-EX 202, Cortez Dep. (July 30, 2020) at 19:8-20:4.	Yes. See NM Response to TX at: - page 56	NM-EX-202: See General Objection #8.	Subject to the stated objections, undisputed.	Apportionment page 11; Apportioment page 30; Apportionment page 39; Apportionment page 40	N/A
154	Apportionment No. 63; similar language in Notice No. 14	From 1951 through 1979, Reclamation allocated Project deliveries on an equal basis to all Project lands and delivered allocated water directly to Project lands.	NM-EX 202, Cortez Dep. (July 30, 2020) 58:19-59:7; NM-EX 511, Filiberto Cortez, Lower Rio Grande Project Operating Agreement: Settlement of Litigation, at 4 (Oct. 2008); NM-EX 100, Barroll Rep. at 31-32.	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX-202: See General Objection #8. NM-EX-511: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. New Mexico’s reference in paragraphs 60, 63 and 64 of the NM MSJ on Apportionment regarding how Project supply was historically allocated based on an equal acre foot per acre basis is not relevant to apportionment of Rio Grande water under the Compact. This allocation applies solely to Project water already stored in Elephant Butte Reservoir and inflows to the Rio Grande downstream of the reservoir, whereas the Compact applies to Rio Grande deliveries to Elephant Butte Reservoir. Project allocations made to respond to orders by the District water users do not form the basis of Texas’s Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1906 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.	Apportionment page 11; Notice page 3,4, 16; Apportionment page 30; Apportionment page 39; Apportionment page 40	N/A
155	Notice No. 16	Reclamation also maintained the Districts’ annual allocation accounting. Reclamation tracked the amount of surface water delivered to individual farm turnouts and assessed these amounts against the farmers’ respective allocations.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 20:1-15, 42:15-43:4, 58:6-59:11; NM-EX 100, Barroll Rep. at 32-33; NM-EX 001, Barroll Decl. at ¶ 20; NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, Final Environmental Impact Statement, at 5 (Sept. 30, 2016).	Yes. See NM Response to TX at: - page 56	From TX's 12/22/20 Filings: NM-EX 202: See General Objection #8. NM-EX 100: See General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX 529: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, generally disputed regarding the ambiguity of the time period referred to. NM-EX 202: The cited “evidence” does not stand for the stated proposition that Reclamation assessed “amounts against the farmers’ respective allocations.” NM-EX 100: The cited “evidence” does not stand for the stated proposition. NM-EX 001: The cited “evidence” does not stand for the stated proposition. NM-EX 529: The cited “evidence” does not stand for the stated proposition.	Notice page 4,16	N/A
156	Apportionment No. 64	Before 1980, Reclamation operated the Project in its entirety, combining storage and return flows so that each acre of Project land was entitled to receive an equal amount of water regardless of the source of the water or in what State the land was located. Thus, based on each District’s share of authorized acreage, “EBID is allocated 88/155 of the available Project water supply and EPCWID is allocated 67/155 of the available Project water supply.”	NM-EX 506, Cortez Aff. at ¶ 11 (Apr. 20, 2007); NM-EX 100, Barroll Rep. at 31.	Yes. See NM Response to TX at: - page 16, 56	From TX's 12/22/20 Filings: NM-EX-506: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. New Mexico’s reference in paragraphs 60, 63 and 64 of the NM MSJ on Apportionment regarding how Project supply was historically allocated based on an equal acre foot per acre basis is not relevant to apportionment of Rio Grande water under the Compact. This allocation applies solely to Project water already stored in Elephant Butte Reservoir and inflows to the Rio Grande downstream of the reservoir, whereas the Compact applies to Rio Grande deliveries to Elephant Butte Reservoir. Project allocations made to respond to orders by the District water users do not form the basis of Texas’s Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1906 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.	Apportionment page 12; Apportionment page 30; Apportionment page 39; Apportionment page 40	N/A

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<b><u>NM- CSMF ¶#</u></b>	<b><u>NM's Prior Numbering System</u></b>	<b><u>New Mexico's Stated "Fact"</u></b>	<b><u>New Mexico's Supporting Evidence</u></b>	<b><u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u></b>	<b><u>TEXAS'S EVIDENTIARY OBJECTIONS</u></b>	<b><u>TEXAS'S RESPONSE</u></b>	<b><u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u></b>	<b><u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u></b>
156	Apportionment No. 64	During this period, there is no record that any party lodged an objection, whether through the RGCC or Reclamation, to challenge Reclamation's principle of allocation on an equal per-acre basis.	NM-EX 005, Stevens Decl. at ¶ 12; NM-EX 003, Lopez Decl. at 25; EX-NM 2, D'Antonio Decl. at ¶ 16.	<b>Yes. See NM Response to TX at: - page 16, 56</b>	NM-EX-005: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 702: the statement in the Stevens Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4). NM-EX-002: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602, 702: Mr. D'Antonio lacks personal knowledge regarding the pre-1980 period and the statement constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion.	Subject to the stated objections, disputed in part. New Mexico's reference in paragraphs 60, 63 and 64 of the NM MSJ on Apportionment regarding how Project supply was historically allocated based on an equal acre foot per acre basis is not relevant to apportionment of Rio Grande water under the Compact. This allocation applies solely to Project water already stored in Elephant Butte Reservoir and inflows to the Rio Grande downstream of the reservoir, whereas the Compact applies to Rio Grande deliveries to Elephant Butte Reservoir. Project allocations made to respond to orders by the District water users do not form the basis of Texas's Compact apportionment. The Compact requires New Mexico to deliver prescribed and indexed quantities of Rio Grande water to Texas in Elephant Butte Reservoir. The 1906 treaty with Mexico and the contracts between the federal government and the Districts then allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-27.	Apportionment page 12; Apportionment page 30; Apportionment page 39; Apportionment page 40	Opp. to US - page 29
157	Apportionment No. 65	From 1931 to 1979, Reclamation operated the Project such that the diversions for EBID in New Mexico totaled 54.5% and diversions for EPCWID in Texas totaled 45.5% of total diversions. From 1951, when Reclamation began enforcing allocations to each acre, until 1979, the diversions for EBID in New Mexico totaled 56.2% and diversions for EPCWID in Texas totaled 43.8% of total diversions.	NM-EX 100, Barroll Rep. at Appx. A, A-8. This is shown graphically in Figure A-3 of Dr. Barroll's Expert Report: [FIGURE A.3. DISTRICT DIVERSIONS 1931-1978] See also id. at A-9; NM-EX 101, Barroll Reb. Rep. at 41, Appx. A, 39.	<b>Yes. See NM Response to TX at: - page 56 (</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. New Mexico's own data as reported in the underlying files of the Spronk Report are inconsistent with the diversion percentages reported in paragraph 65 of NM MSJ on Apportionment and attributed in paragraph 65 to the work of New Mexico's other expert, Peggy Barroll. In paragraph 65, New Mexico states that from 1931 to 1979, diversions by EP#1 totaled 45.5 percent of total diversions, but the Spronk data show only 41.7 percent, slightly less than the 43 percent allocation. Similarly, for 1951 to 1979, in paragraph 65 New Mexico reports that EP#1 diverted 43.8 percent of the total diversions, whereas the Spronk data show that EP#1 diverted only 38.5 percent. Methods used by Peggy Barroll and those described in the underlying data of the Spronk Report also differ in how the distributions of diversions by EP#1 in Mesilla Valley were made, with Barroll assuming 20 percent and Spronk an average of 14 percent. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 28.	Apportionment page 12; Apportionment page 30	N/A
158	Apportionment No. 66; similar language in Notice No. 17 and Full Supply 10	In approximately 1979, Project operations changed with the transfer of some Project facilities to the Districts. Reclamation started to allocate water to each District for delivery at the District's canal headings (i.e., Arrey, Leasburg, Mesilla, Franklin and Riverside) rather than directly to farm headgates. Since those transfers, Reclamation determines the Districts' Project allocations, takes water orders from the Districts, releases water from Caballo reservoir, and then makes deliveries to canal headings for water users in each District. The Districts in turn take farm orders from their members, place orders with Reclamation for water to be delivered at canal headings, and then take delivery of that water and deliver it to farm headgates in each State.	NM- EX 001, Barroll Decl. at ¶ 21; See NM- EX 202, Cortez Dep. (July 30, 2020) at 59:12-60:4, 64:3- 15; NM-EX 210, Ferguson Dep. (Feb. 20, 2020) at 233:3-6; NM-EX 208, Esslinger Dep. (Aug. 18, 2020) at 57:4-58:8, 59:3-18; NM-EX 222, Reyes Dep. (Aug. 31, 2020) at 20:3-14; NM-EX 223, Rios Dep. (Aug. 26, 2020) at 48:12-18, 49:10-20.	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-202: <i>See</i> General Objection #8. NM-EX-210: <i>See</i> General Objection #8. NM-EX-208: <i>See</i> General Objection #8. NM-EX-222: <i>See</i> General Objection #8. NM-EX-223: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Apportionment page 13-14; Apportionment page 30; Notice page 4, 16; Full supply page 4, 13	N/A
159	Notice No. 18	Reclamation retained, in the period after 1979, the responsibility to account for the total deliveries to each District (EBID and EPCWID) and to Mexico at their respective diversion headings in a given year.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 31:13-23, 49:3-11.	<b>Yes. See NM Response to TX at: - page 56</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX 202: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed with regard to the first sentence. Subject to the stated objections, disputed with regard to the second sentence. The cited "evidence" does not stand for the stated proposition.	Notice page 4, 16	N/A
159	Notice No. 18	From 1979 through 2005, Reclamation continued to operate the Project as a single unit on an equal amount of water per acre basis.	N/A	<b>Yes. See NM Response to TX at: - page 53, 56</b>			Notice page 4, 16	N/A
160	Notice No. 19	Reclamation relies on the Districts to monitor and report the actual diversions that each takes at its diversion points from the Rio Grande.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 49:20-50:12.		<b>From TX's 12/22/20 Filings:</b> NM-EX 202: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Notice - page 4; 16 (The Compact requires notice of delivery shortages)	N/A
161	Notice No. 20	Reclamation compiles its accounting of the Districts' respective Project allocation and delivery charges on a monthly basis.	See NM-EX 203, Cortez Dep. (July 31, 2020) at 215:23- 216:16; NM-EX 221, Reyes Dep. (Nov. 16, 2018) at 65:8-66:8.	<b>NO</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX 203, 221: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Notice - page 4; 16 (The Compact requires notice of delivery shortages)	N/A



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162	Apportionment No. 68	After 1979, Reclamation developed a method known as the D1/D2 method for allocating water to the Districts.	See NM-EX 403, Operating Agreement between Elephant Butte Irrigation District, El Paso County Water Improvement District No.1, and United States Bureau of Reclamation, at 3-4 (1985) (unexecuted draft); NM-EX 511, Filiberto Cortez, Lower Rio Grande Project Operating Agreement: Settlement of Litigation, at 4 (Oct. 2008); NM-EX 100, Barroll Rep. at 33.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-403: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-511: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (See Figures 9 and 10 to Brandes Dec). See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	Apportionment - page 14; 30; 45	Opp to US - page 18; 28; 33
163	Apportionment No. 70	The D1/D2 method was based on the distribution of Project supply during the period from 1951 to 1978 and continued allocating 57% of Project supply to New Mexico lands and 43% of Project supply to Texas lands.	NM-EX 202, Cortez Dep. (July 30, 2020) at 170:25-172:10 (examining NM-EX 403, Operating Agreement between Elephant Butte Irrigation District, El Paso County Water Improvement District No.1, and United States Bureau of Reclamation, at 3-4 (1985) (unexecuted draft)); NM-EX 100, Barroll Rep. at 33-34.	<b>Yes. See NM Response to TX at: - page 49, 50</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-202: <i>See</i> General Objection #8. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (See Figures 9 and 10 to Brandes Dec). See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	Apportionment - page 14; 30; 45	Opp to US - page 18; 28; 33
164	N/A	Under the D1/D2 Allocation Method, the D1 Curve is the observed relationship between total Project release from storage and farm delivery plus the delivery to Mexico, and the D2 Curve is the bserved relationship between Project release from storage and total project diversions, including Mexico. Using the method, Mexico's share of Project Supply was calculated using the D1 Curve. The total Project Supply was calculated using the D2 Curve, and Project Supply remaining beyond Mexico's share was split 57% to EBID and 43% to EPCWID.	See NM-EX 006, Barroll 2d Decl. at ¶ 57; see also NM-EX 100, Barroll Rep. at 33-37, Appx. A, A-13-17.	<b>Yes. See NM Response to TX at: - page 49, 50</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the D1/D2 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #164 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 18; 28; 33
165	Apportionment No. 72	Reclamation began making Project allocations using the D1/D2 allocation procedure from at least 1985.	NM-EX 202, Cortez Dep. (July 30, 2020) at 168:20-24; NM-EX 100, Barroll Rep. at 33-34.	<b>Yes. See NM Response to TX at: - page 50</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-202: <i>See</i> General Objection #8. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (See Figures 9 and 10 to Brandes Dec). See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	Apportionment - page 14; 30; 45	Opp to US - page 18; 28

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
166	Apportionment No. 69	According to Reclamation, “D2 was developed to calculate the amount of water that was needed at the main canal headings to make the 3.0241 ac-ft/acre deliveries to the lands.”	NM-EX 409, Email from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Chris Rich et al. (Apr. 12, 2002).	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-409: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (See Figures 9 and 10 to Brandes Dec). See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	Apportionment - page 14; 30; 45	N/A
167	Notice No. 22	In order to calibrate releases of Project supply from Caballo and Elephant Butte reservoirs into the Rio Grande, Reclamation takes delivery orders from each District and makes appropriate reservoir release adjustments on a daily basis.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 64:3-15.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 202: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Notice - page 4; 16; 17	N/A
168	Notice No. 23	To facilitate this process, the Districts take water orders from their respective constituents and transmit total orders to Reclamation.	See NM-EX 208, Esslinger Dep. (Aug. 18, 2020) at 57:4-58:8, 59:3-18; NM-EX 222, Reyes Dep. (Aug. 31, 2020) at 20:3-14; NM-EX 223, Rios Dep. (Aug. 26, 2020) at 48:12-18, 49:10-20; NM-EX 001, Barroll Decl. at ¶ 21.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 208, 222, 223: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Notice - page 5; 16; 17	N/A
169	Notice No. 24	Once Reclamation delivers water to a District’s diversion point, the District administers the conveyance of that water to individual farm turnouts and accounts for delivery of the water in satisfaction of the farmers’ respective orders.	See NM-EX 208, Esslinger Dep. (Aug. 18, 2020) at 56:19-58:23, 60:22-62:7; NM-EX 223, Rios Dep. (Aug. 26, 2020) at 31:4-6, 33:10-14.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 208, 223: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	<u>Notice</u> - page 5; 16; 17	N/A
170	N/A	Beginning in about 1980, changes to Project infrastructure within EPCWID eliminated river diversions that previously supplied the Riverside and Tornillo Canals and ceased the conveyance between the EPCWID drains in the El Paso Valley and the Tornillo Canal. Following these changes, there is no evidence that EPCWID makes any use of drain flow or other irrigation return flow arising within the El Paso Valley.	See NM-EX 006, Baroll 2d Decl. at ¶ 51; see also NM-EX 100, Barroll Rep. Appx. C, C-21-28.	<b>Yes. See NM Response to TX at: - page 37</b>	NM-EX-006: Fed. R. Evid. 602, Dr. Barroll lacks personal knowledge regarding the stated facts to the extent the stated facts purport to address the hisotry of irrigation district activities in the Rio Grande Basin. NM-EX-100, 101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding EPCWID drains do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #170 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
170	N/A	If EPCWID resumed use of the irrigation return flows that arise within its boundaries, this would reduce the reservoir releases needed to meet EPCWID demands and would make additional water available for allocation and delivery to EBID.	See NM-EX 012, Sullivan Decl. at ¶¶ 26, 35; see also NM-EX 122, Spronk Rep. at 19-20.	<b>Yes. See NM Response to TX at: - page 37</b>	NM-EX-122: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding EPCWID's use of return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #170 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. Further, New Mexico cites CSMF #170 in a section regarding Texas's administration of water (see Sec. IV.C) which does not respond to facts stated in Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A	N/A

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171	Full Supply No. 11	Starting in about 1990, Reclamation determined that a release of 763,842 AFY from Project Storage was a full-supply condition.	See, e.g., NM-EX 105, Excerpts, United States' Disclosure of Expert Rebuttal Witness Dr. Ian M. Ferguson (Dec. 30, 2019) [hereinafter "Ferguson Discl."] at 8 ("Prior to the [2008 Operating Agreement], full supply was defined by Usable Water available for the current-year allocation equal to or greater than 763,800 acre-feet . . . ."); NM-EX 104, Excerpts, United States' Disclosure of Rebuttal Expert Dr. Al Blair (Dec. 30, 2019) [hereinafter "Blair Discl."] at 8 (stating that prior to 2008 Operating Agreement a maximum annual release for a full-supply year was 763,840 AF).	Yes. See NM Response to TX at: - page 34	From TX's 12/22/20 Filings: NM-EX 105, 104: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed in part. In NM-EX 001, the statement that "Reclamation will ensure" the allocation is available for diversion is not supported by citations NM-EX-400 or NM-EX-529.	Full supply - page 4-5; *No citation to any UMFs in body of Full Supply Brief	N/A
171	Full Supply No. 11	Reclamation determined that this release from Project Storage would provide 931,841 AFY of divertible water at U.S. and Mexico canal headings.	NM-EX 001, Barroll Decl., ¶ 22; NM-EX 400, Bureau of Rec., Rio Grande Project Water Supply Allocation Procedures [hereinafter "WSAP"] at 4.	Yes. See NM Response to TX at: - page 34	NM-EX 400: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed in part. In NM-EX 001, the statement that "Reclamation will ensure" the allocation is available for diversion is not supported by citations NM-EX-400 or NM-EX-529.	Full Supply - page 4-5; *No citation to any UMFs in body of Full Supply Brief	N/A
171	Full Supply No. 11	According to Project allocation procedures at that time, from this 931,841 AFY, 60,000 AFY was deducted for delivery to Mexico. Reclamation then divided the remaining 871,841 AFY, 43% (376,862 AFY) to EPCWID and 57% (494,979 AFY) to EBID in accordance with the percentages set out in the 1938 Downstream Contract.	NM-EX 001, Barroll Decl. at ¶ 22; NM-EX 400, WSAP at 4–5; NM-EX 324, 1938 Downstream Contract.	Yes. See NM Response to TX at: - page 34	NM-EX 400: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed in part. In NM-EX 001, the statement that "Reclamation will ensure" the allocation is available for diversion is not supported by citations NM-EX-400 or NM-EX-529.	Full Supply - page 4-5; *No citation to any UMFs in body of Full Supply Brief	N/A
171	Full Supply No. 11	The 376,842 AFY quantity represents a full-supply Project allocation to EPCWID that Reclamation will ensure is available for diversions at EPCWID's headgates if EPCWID orders (takes) this volume of water.	NM-EX 001, Barroll Decl. at ¶ 23; NM-EX 400, WSAP at 4–5; see also NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 86 (Sep. 30, 2016) (referring to "[t]he historical full [EPCWID] allocation of 376,842 acre-feet").	Yes. See NM Response to TX at: - page 34	NM-EX 400: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 529: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed in part. In NM-EX 001, the statement that "Reclamation will ensure" the allocation is available for diversion is not supported by citations NM-EX-400 or NM-EX-529.	Full Supply - page 4-5; *No citation to any UMFs in body of Full Supply Brief	N/A
172	Full Supply No. 12	Between 1985 and 1990, before Reclamation had finalized the analysis described [in the preceding paragraph] above, Reclamation's full-supply year determinations for EPCWID varied slightly from 376,842 AFY. For example, from 1985 through 1988, Reclamation determined a full-supply year Project allocation to EPCWID to be 363,963 AFY; and in 1989 and 1990, Reclamation determined a full-supply year Project allocation to EPCWID to be 359,165 AFY. These were hydrologically wet years with plenty of water in Project Storage and full-supply allocations were available to both Districts (EBID and EPCWID).	NM-EX 001, Barroll Decl. at ¶ 24; NM-EX 509, Bureau of Reclamation Table, Rio Grande Project Allocation of Project Water Supply (Apr. 3, 2008) ("Reclamation Data Table") at col. 2.	NO	From TX's 12/22/20 Filings: NM-EX 509: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-001: See General Objection #1.	From TX's 12/22/20 Filings: Subject to the stated objections, disputed. In NM-EX-001, the quantifications about EP#1 allocations are not supported and the citation to NM-EX-509 does not show allocations to each district. Additionally, see Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.	Full Supply - page 5-6; *No citation to any UMFs in body of Full Supply Brief	N/A



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173	Apportionment No. 74	In 2003, the Project began to suffer the effects of the severe drought that has plagued the Rio Grande basin for the last two decades.	NM-EX 412, Herman Settemeyer, Rio Grande Project/Rio Grande Compact Operation, at 4 (2004); NM-EX 213, Ivey Dep. (Aug. 28, 2020) at 69:25-71:1, 75:19-24.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-412: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-213: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (See Figures 9 and 10 to Brandes Dec). See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	Apportionment - page 14-15; 30; 45; 46	N/A
173	Apportionment No. 74	Nonetheless, in 2003 and 2004, Reclamation allocated 57% of Project water to New Mexico Project lands and 43% to Texas Project lands using the D1/D2 method.	NM-EX 201, Rule 30(b)(6) Dep. of the U.S. Bureau of Reclamation by and through Cortez (Aug. 20, 2020) at 50:6-51:15.	NO	NM-EX-201: <i>See</i> General Objection #8.	Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (See Figures 9 and 10 to Brandes Dec). See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	Apportionment - page 14-15; 30; 45; 46	N/A
174	Apportionment No. 73	Reclamation continued making allocations to the Districts in the proportion of 57% of Project water to New Mexico lands and 43% of Project water to Texas lands using the D1/D2 method through 2005.	NM-EX 202, Cortez Dep. (July 30, 2020) at 59:12-60:9; NM-EX 511, Filiberto Cortez, Lower Rio Grande Project Operating Agreement: Settlement of Litigation, at 4 (Oct. 2008); NM-EX 100, Barroll Rep. at 34, n.66.	<b>Yes. See NM Response to TX at: - page 49</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-202: <i>See</i> General Objection #8. NM-EX-511: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (See Figures 9 and 10 to Brandes Dec). See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	Apportionment - page 14; 30; 45	N/A
175	Apportionment No. 75	In 2005, Reclamation was able to make a full D1/D2 allocation in the percentage of 57% to New Mexico lands and 43% to Texas lands.	NM-EX 202, Cortez Dep. (July 30, 2020) at 89:21- 90:5 (examining NM-EX 328, Bureau of Reclamation, Environmental Assessment and Finding of No Significant Impact for the Bureau of Reclamation Federal Rio Grande Project New Mexico-Texas Operating Procedures, Dona Ana, Sierra, and Socorro Counties, New Mexico and El Paso County, Texas, at 4 (June 11, 2007)); NM-EX 100, Barroll Rep. at 34, n.66.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-202: <i>See</i> General Objection #8. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (See Figures 9 and 10 to Brandes Dec). See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	Apportionment - page 15; 30; 45; 46	N/A

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176	Apportionment No. 76	From 1979 to 2005, Reclamation allocated Project water such that 57% of Project supply was available for EBID lands in New Mexico and 43% of Project supply was available for EPCWID lands in Texas. From 1979 to 2005, the charged diversions by EBID in New Mexico (which accounts for water available and ordered by the Districts) totaled 58% and charged diversions for EPCWID in Texas totaled 42% of total diversions.	NM-EX 100, Barroll Rep. at Appx. A, A-13-15.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. This paragraph is misleading. The D1/D2 method referenced in paragraphs 68 through 70 and paragraphs 72 through 76 of NM MSJ Motion on Apportionment has nothing to do with Compact apportionment; rather, it relates to how the Project was operated during 1951 through 1978. The Compact requires Rio Grande water deliveries from New Mexico to Elephant Butte Reservoir for Texas, and the 1906 treaty with Mexico and the contracts between the federal government and the Districts allocate the stored water in Elephant Butte Reservoir, along with downstream inflows to the Rio Grande, to Mexico, EBID, and EP#1. Furthermore, the D1/D2 method does not reflect Project water supply conditions as they existed at the time of Compact adoption in 1938. The D1/D2 method understates the supply of Project water available under the Compact because it is based on Project delivery conditions that occurred during 1951 and 1978 when substantial groundwater pumping had already developed in the Rincon and Mesilla basins of New Mexico (See Figure 5) causing flows in the drains and in the Rio Grande at El Paso relative to releases from Caballo Reservoir and the deliveries to EP#1 to be reduced. (See Figures 9 and 10 to Brandes Dec). See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 29.	Apportionment - page 15-16; 30; 45	N/A
176	Apportionment No. 76	This is illustrated in Figure A.5 of Dr. Barroll’s expert report:	[FIGURE A.5. TOTAL ALLOCATION TO DISTRICTS AND MEXICO: D1/D2 ALLOCATION (1979-2005)]	NO			Apportionment - page 15-16; 30; 45	N/A
177	Full Supply No. 16	Reclamation recognizes the years 1985 through 2002 and 2005 as full supply years for the Project, and also recognizes those years as full-supply years for EPCWID, meaning that in each of those years Reclamation determined that a full allocation of Project water was available for diversions at EPCWID’s headgates if ordered.	NM-EX 001, Barroll Decl., ¶¶ 28–30, 32–33, 37 & Table 1; see also NM-EX 402, EPCWID Accounting Records [EOY_Acct_EP_1985-2016]; NM-EX 509, Reclamation Data Table;NM-EX 202, Cortez Dep (Jul. 30, 2020) at 82:16-83:2, 91:1-8, 92:19-93:7 (stating that 1979 through 2002 were “full supply” years, that a full Project supply allocation is the maximum amount that Reclamation will allocate, and that “[a] full supply is the allocation made to the district based on historical data” about irrigation demands); NM-EX 210, Ferguson Dep. (Feb. 20, 2020) at 229:15-18 (“[F]rom about 1985 or ’6, through about 2002 . . . I know to be years of full project supply.”), 233:1-3 (agreeing that “there’s full supply from 1979 to 2002”); and 259:12-16 (agreeing that “[t]he project enjoyed full supply conditions from 1979 through 2002, and EPCWID was allocated a full supply in each . . . Rio Grande Project/Rio Grande Compact Operation, at 4 (2004) (presenting that “Rio Grande Project water users enjoyed full allocations of water from 1979 until 2003”); see also NM-EX 214, Excerpts, King Dep. (May 18, 2020) at 102:19-23 (confirming that a full supply “is the amount of water that Reclamation allocated to each district from 1979 to 2002, when each year was a full-supply” and that in each of those years “[t]here was a full supply available for release from storage”).	Yes. See NM Response to TX at: -page 27	<b>From TX's 12/22/20 Filings:</b> NM-EX 001: <i>See</i> General Objection #1. NM-EX 402: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 509: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 202: <i>See</i> General Objection #8. NM-EX 210: <i>See</i> General Objection #8. NM-EX 412: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 214: <i>See</i> General Objection #8. NM-EX 225: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.	Full supply - page 7-9; *No citation to any UMFs in body of Full Supply Brief	N/A
178	Apportionment No. 71	According to Reclamation, prior to 2005, the Districts did not sign an “operating agreement, plan, or criteria,” but “acquiesced and cooperated with Reclamation’s procedures on a year to year basis.”	NM-EX 508, Bureau of Reclamation, Environmental Assessment and Finding of No Significant Impact for the Bureau of Reclamation Federal Rio Grande Project New Mexico- Texas Operating Procedures, Dona Ana, Sierra, and Socorro Counties, New Mexico and El Paso County, Texas, at 3 (June 11, 2007); NM-EX 202, Cortez Dep. (July 30, 2020) at 87:8-88:10.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-508: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-202: <i>See</i> General Objection #8; Fed. R. Evid. 401: The testimony was not taken under Fed. R. Civ. P. 30(b)(6), so it is improper to represent as Reclamation’s position.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Apportionment - page 14; 30; 45	Opp to US - page 29; 34

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179	Apportionment No. 77	In 2006 Reclamation began using a new method for allocating Project water between the two Districts. Neither the RGCC nor New Mexico were given input into the new method before it was implemented.	NM-EX 100, Barroll Rep. at 40; NM-EX 004, Schmidt-Petersen Decl. at ¶ 10; NM-EX 003, Lopez Decl. At ¶ 29; NM-EX 002, D'Antonio Decl. at ¶ 10; see, e.g., NM-EX 504, Letter from Filiberto Cortez, Manager, El Paso Field Division, Bureau of Reclamation, to Gary Esslinger, Manager-Treasurer, Elephant Butte Irrigation District (Nov. 21, 2006).	<b>Yes. See NM Response to TX at: - page 30</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602: Mr. Schmidt-Petersen does not have personal knowledge regarding all potential communications to the “RGCC or New Mexico” regarding the 2006 method for water allocation. NM-EX-003: General Objection #2; Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602 : Mr. Lopez does not have personal knowledge regarding all potential communications to the “RGCC or New Mexico” regarding the 2006 method for water allocation. NM-EX-504: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c).	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. The cited evidence does not support the assertion that “Neither the RGCC nor New Mexico were given input into the new method before it was implemented.”	Apportionment - page 16	Opp to US - page 29
180	Full Supply No. 13	From 2006 onwards, Reclamation has determined annual Project allocations to the Districts under the 2008 Operating Agreement, and the antecedent D3-Allocation-Plus-Carryover method from which the 2008 Operating Agreement was developed.	NM-EX 001, Barroll Decl. at ¶ 25; NM-EX 510, Operating Agreement for the Rio Grande Project [hereinafter “2008 Operating Agreement”] (Mar. 10, 2008); NM-EX 502, D3 Allocation of Project Water to the Districts and Mexico; NM-EX 507, 2007 Operating Procedures.	<b>Yes. See NM Response to TX at: - page 30</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX 001: <i>See</i> General Objection #1. NM-EX 502, 510, 507: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.	Full supply - page 6; *No citation to any UMFs in body of Full Supply Brief	Opp to US - page 29
180	Full Supply No. 13	Under the 2008 Operating Agreement, Reclamation determines a full-supply year Project allocation to EPCWID to be 388,192 AFY.	NM-EX 001, Barroll Decl., ¶ 25; NM-EX 510, 2008 Operating Agreement at 3; see, e.g., NM-EX 105, Ferguson Discl. at 8 (“[U]nder the [2008 Operating Agreement], full supply conditions are defined by Usable Water available for the current-year allocation equal to or greater than 790,000 acre-feet.”); NM-EX 104, Blair Discl. at 8 (stating that prior to the 2008 Operating Agreement, a maximum annual release for a full-supply year was 763,840 AF).	<b>Yes. See NM Response to TX at: - page 30</b>	NM-EX 001: <i>See</i> General Objection #1. NM-EX 502, 510, 507: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 105, 104: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX 100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.	Full supply - page 6; *No citation to any UMFs in body of Full Supply Brief	Opp to US - page 29
181	N/A	Under the D3-Allocation-Plus-Carryover method, Reclamation generally allocates to Mexico and EPCWID the same amounts that they would receive for a given level of Project supply under the D1/D2 methodology. EBID’s allocation, however, relies on the “Diversion Ratio.” This term is calculated as the ratio of annual charged diversions from the Project, including Mexico, divided by the annual Project release. The D3 method calculates Project supply as a function of the Diversion Ratio and calculates EBID’s allocation as the difference between Project supply minus the allocation to EPCWID and Mexico. Holding the effects of carryover and accounting credits constant, a higher Diversion Ratio generally increases the allocation to EBID while a lower one decreases it.	See Ex. 100, Barroll Rep. at 40-41, Appx. D, D-14-15.	<b>Yes. See NM Response to TX at: - page 60</b>	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the D3 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #181 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 13; 14; 15 - page 18; 33



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182	N/A	The D3-Allocation-Plus-Carryover method reduces EBID’s allocation by the total of all real or apparent discrepancies in Project performance relative to the 1951-1978 period. As a result, all increases in system losses that have occurred since the 1951-1978 period result in reductions to EBID’s allocation.	NM-EX 100, Barroll Rep. at 40-44.	Yes. See NM Response to TX at: - page 30, 60	NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the D3 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #182 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 14; 15 - page 47 - page 61; 62
182	N/A	Similarly, all reductions in accounted deliveries that have occurred as a result of changes in Project accounting cause reductions to EBID’s allocation.	See NM-EX 006, Barroll 2d Decl. at ¶¶ 41, 58; see also NM-EX 428, Letter from Filiberto Cortez, Manager, Bureau of Reclamation, to Edd Fifer (July 8, 1999); NM-EX 100, Barroll Rep. at 30, 49- 50, Appx. D, D- 25-28; NM-EX 101, Barroll Reb. Rep. at 24-36.	Yes. See NM Response to TX at: - page 30, 60	NM-EX-006: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 702: the statement in the Barroll 2d Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. NM-EX-428: See General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-100, 101: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	SAME AS ABOVE (182)	N/A	Opp to US - page 14; 15 - page 47 - page 61; 62
182	N/A	For example, the fact that municipal effluent from the City of El Paso in the El Paso Valley is no longer accounted as Project Supply reduces EBID’s allocation.	See NM-EX 006, Barroll 2d Decl. at ¶ 59; see also NM-EX 100, Barroll Rep. at 60.	Yes. See NM Response to TX at: - page 30, 60	NM-EX-006: Fed. R. Evid. 401, 402; the cited portion of the document is irrelevant because it does not stand for the "fact(s)" stated. The cited portion of the document does not address municipal effluent from the City of El Paso. NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	SAME AS ABOVE (182)	N/A	Opp to US - page 14; 15 - page 47 - page 61; 62
183	N/A	Much of the apparent discrepancies in Project performance during the period from 2006 forward relative to the 1951-1978 period may be explained by changes to the accounting methods at use in the Project. New Mexico’s analysis shows that changes in Project accounting are responsible for up to 74,000 AF of the apparent reduction in Project deliveries or Project performance since the 1951-1978 period; D3 Allocation reduces EBID’s allocation for all these reductions in Project performance. Thus, up to 74,000 AF of reduction in EBID’s allocation are not a result of groundwater pumping in New Mexico.	See NM-EX 006, Barroll 2d Decl. at ¶ 59; see also NM-EX 100, Barroll Rep. at 60.	Yes. See NM Response to TX at: - page 30, 60	NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Rio Grande Project accounting do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #183 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 14; 15 - page 47
184	N/A	Also starting in approximately 2006, Reclamation initiated individual “carryover accounts” for the Districts. Thereafter and during the allocation process, the amounts in the Carryover account, plus extra water needed to ensure delivery of those accounts, has been deducted from Project Storage before the D3 Allocation for the next year is calculated. Because of the contemporaneous reduction in its allocation, EBID has not been able to take much advantage of Carryover. In contrast, EPCWID has carried over large amounts of allocation in many years. The mechanics of how these Carryover accounts are implemented means that large amounts of EPCWID Carryover have reduced the water available for allocation to EBID.	See NM-EX 006, Barroll 2d Decl. at ¶ 60; NM-EX 100, Barroll Rep. at 48-49, Appx. D, D-21-23; NM-EX 101, Barroll Reb. Rep. at 21-24.	Yes. See NM Response to TX at: - page 67	NM-EX-100, 101: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Rio Grande Project accounting do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #184 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
185	Apportionment No. 78	In January and February 2008, Reclamation, EPCWID, and EBID negotiated a new operating agreement for the Project as settlement for the two lawsuits among the parties (“2008 Operating Agreement”).	See generally NM-EX 511, Filiberto Cortez, Lower Rio Grande Project Operating Agreement: Settlement of Litigation (Oct. 2008).	NO	From TX’s 12/22/20 Filings: NM-EX-511: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	From TX’s 12/22/20 Filings: Subject to the stated objections, undisputed.	Apportionment - page 16	Opp to US - page 34



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185	Apportionment No. 78	The negotiations were mediated by Pat Gordon, Texas's Compact Commissioner.	NM-EX 212, Gordon Dep. (July 15, 2020) at 42:8- 43:24; NM-EX 107, Lopez Rep. at 43.	NO	NM-EX-212: <i>See</i> General Objection #8. NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, undisputed.	Apportionment - page 16	Opp to US - page 34
186	Apportionment No. 79	The 2008 Operating Agreement [adopted the D3-Allocation-Plus-Carryover allocation system], and therefore[, it changed] the amount of water that was available for lands in New Mexico and Texas.	NM-EX 202, Cortez Dep. (July 30, 2020) at 94:23-96:9 (examining NM-EX 506, Cortez Affidavit ¶¶ 11, 25 (Apr. 20, 2007)); NM-EX 100, Barroll Rep. at 40-46; NM-EX 107, Lopez Rep. at 44-46.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-202: <i>See</i> General Objection #8. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. In paragraph 79 of NM MSJ on Apportionment, New Mexico asserts that the 2008 Operating Agreement “changed the way that water was allocated between the two Districts, and therefore the amount of water that was available for lands in New Mexico and Texas.” In paragraph 80, New Mexico asserts its “primary concern” with the 2008 Operating Agreement is that it is not consistent with the Compact and does not allocate 57 percent of Project supply to New Mexico lands. In fact, under the Operating Agreement New Mexico has received more water than it otherwise should have based solely on the D2 Curve prior to implementation of the Operating Agreement. This is demonstrated by the graph in Figure 11. The blue x’s show total Project surface water diversions between 2008 and 2016; the black x’s show the total amount of diversions, including groundwater pumping by New Mexico, for the same period. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 30-31.	Apportionment - page 16	Opp to US - page 34
187	N/A	United States witnesses have testified that the purpose of the change in allocation associated with the 2008 Operating Agreement was to both offset depletions caused by New Mexico groundwater pumping and depletions, and to protect the delivery of EPCWID’s allocation from the effects of New Mexico pumping. The United States did not perform any quantitative analysis of the impacts of New Mexico pumping at the time the 2008 Operating Agreement was adopted.	See, e.g., NM-EX 105, Ferguson Reb. Rep. at 5-6. See NM-EX 006, Barroll 2d Decl. at ¶ 65.	<b>Yes. See NM Response to TX at: - page 36</b>	NM-EX-105: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-006: Fed. R. Evid. 602, the declarant lacks personal knowledge regarding the statement that “[t]he US did not perform any quantitative analysis of the impacts of New Mexico pumping at the time the 2008 Operating Agreement was adopted.”	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #187 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 15 - page 34 - page 47
188	N/A	Under the D3-Allocation-Plus-Carryover allocation system, EPCWID has been allocated and received far more than its 43% share of Project Water. Conversely, EBID has been allocated and received less than its 57% share of Project Water.	Dr. Barroll’s figure 8.3 depicts this change: [TOTAL ANNUAL ALLOCATION TO DISTRICTS 1996-2018] NM-EX 100, Barroll Rep. at 68; see also NM-EX 001, Barroll Decl., ¶ 36; NM-EX 100, Barroll Rep. at x-xi, 31, 33, 69.	<b>Yes. See NM Response to TX at: - page 30</b>	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the D3 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #188 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. <b>As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 14 - page 47
189	N/A	From 2006-2019, EPCWID’s percentage share of Project allocation, excluding Carryover, has averaged 56% of the total Districts’ allocation, compared with 43% prior to 2006. If Project Supply had been divided 57:43—as it had been done historically—EPCWID would have been allocated a total 693,408 AF less during 2006-19. EBID would have been allocated 693,408 AF more of Project Supply.	NM-EX 101, Barroll Reb. Rep. at 44 & Table 9.	<b>Yes. See NM Response to TX at: - page 30, 36, 67</b>	NM-EX-101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Rio Grande Project allocation and the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #189 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 13; 14 - page 47
189	N/A	By reducing EBID’s surface water allocation, the 2008 Operating Agreement forces EBID members to pump additional groundwater to order to supply their crops.	See NM-EX 006, Barroll 2d Decl. at ¶ 62.	<b>Yes. See NM Response to TX at: - page 30, 36, 67</b>	n/a	See above (189)	N/A	Opp to US - page 13; 14 - page 47
190	Notice No. 25	Following the 2008 Operating Agreement, among other changes, the Districts assumed from Reclamation the responsibility to calculate the actual Project release as a function of their total daily orders.	See NM-EX 207, Esslinger Dep. (Aug. 17, 2020) at 122:4-9; NM-EX 221, Reyes Dep. (Nov. 16, 2008) at 23:20-24:18; NM-EX 001, Barroll Decl. at ¶ 21.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 207, 221: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. NM-EX 001: Cited “evidence” does not support the proposition. NM-EX 207: Cited “evidence” does not support the proposition. NM-EX 221: Cited “evidence” does not support the proposition.	<u>Notice</u> - page 5; 16; 17	N/A

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191	Full Supply No. 14	During each irrigation season (approximately March through October), each District is entitled to order delivery of Project Water up to its annual Project allocation. Deliveries to the Districts are measured by gages and are converted into what are known as “Charged Diversions” (or “Allocation Charges”), which are then subtracted from each District’s allocation account as the irrigation season progresses.	NM-EX 001, Barroll Decl. at ¶¶ 21, 26; NM-EX 510, 2008 Operating Agreement at 9–11; NM-EX 529, Bureau of Reclamation, Continued Implementation of the 2008 Operating Agreement for the Rio Grande Project, New Mexico and Texas: Final Environmental Impact Statement, at 18, 24, appx. B (Sep. 30, 2016).	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 001: <i>See</i> General Objection #1. NM-EX 510, 529: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Full supply - page 6; *No citation to any UMFs in body of Full Supply Brief	N/A
192	Full Supply No. 15	During the course of the irrigation season, Reclamation receives orders from the Districts and adjusts the gates of Caballo Dam so that these orders are delivered to the Districts’ canal headings.	See NM-EX 531, Rio Grande Project Operations Manual at 4-5 (2018) [hereinafter “Operations Manual”].	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 531: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. Dr. Barroll cites Dr. Ferguson as her only source for her statement that “Historically, Reclamation has always been able to fulfill the orders made by the Districts.” She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).	Full supply - page 7; *No citation to any UMFs in body of Full Supply Brief	N/A
192	Full Supply No. 15	Reclamation sets the Caballo release amount taking into account the losses and gains between Caballo Dam and the canal headings to which it is delivering water, so that regardless of what losses or gains are occurring, the amount ordered will reach the canal heading for which the order is being made.	NM-EX 531, Operations Manual at 4–8.	NO	NM-EX 531: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, disputed in part. Dr. Barroll cites Dr. Ferguson as her only source for her statement that “Historically, Reclamation has always been able to fulfill the orders made by the Districts.” She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).	Full supply - page 7; *No citation to any UMFs in body of Full Supply Brief	N/A
192	Full Supply No. 15	If the delivery to EPCWID falls short of the order, there is a procedure by which EPCWID, EBID and Reclamation coordinate and water is released from EBID’s works to temporarily mitigate the shortfall until adjustment of Caballo releases resolves the problem.	NM-EX 001, Barroll Decl., ¶ 27; NM-EX 531, Operations Manual, at 8.	NO	NM-EX 531: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 001: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 702(a) – Dr. Barroll cites Dr. Ferguson as her only source for her statement that “Historically, Reclamation has always been able to fulfill the orders made by the Districts.” She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).	Subject to the stated objections, disputed in part. Dr. Barroll cites Dr. Ferguson as her only source for her statement that “Historically, Reclamation has always been able to fulfill the orders made by the Districts.” She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).	Full supply - page 7; *No citation to any UMFs in body of Full Supply Brief	N/A
192	Full Supply No. 15	Historically, Reclamation has always been able to fulfill the orders made by the Districts.	NM-EX 001, Barroll Decl. at ¶ 27; see also NM-EX 105, Ferguson Discl. at 12–13 (“EPCWID received all water that the district ordered during the period 1979- 2002”); NM-EX 210, Ferguson Dep. (Feb. 20, 2020) at 260:6-7 (“I’m not aware of any records that suggest EP1 [EPCWID] ordered water that it did not receive.”).	NO	NM-EX 001: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 702(a) – Dr. Barroll cites Dr. Ferguson as her only source for her statement that “Historically, Reclamation has always been able to fulfill the orders made by the Districts.” She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a). NM-EX 105: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX 210: <i>See</i> General Objection #8.	Subject to the stated objections, disputed in part. Dr. Barroll cites Dr. Ferguson as her only source for her statement that “Historically, Reclamation has always been able to fulfill the orders made by the Districts.” She has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a), and it would additionally be based on insufficient facts and data under Fed. R. Evid. 702(a).	Full supply - page 7; *No citation to any UMFs in body of Full Supply Brief	N/A

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193	Full Supply No. 17	The years 2007 through 2010 were full-supply years for EPCWID because in each of those years EPCWID's annual allocation available for diversions at EPCWID's headgates (if ordered) exceeded 376,862 AFY—the full-supply allocation amount determined by Reclamation in 1990—and also exceeded the higher full-supply allocation to EPCWID (388,192 AFY) under the 2008 Operating Agreement.	NM-EX 001, Barroll Decl. at ¶¶ 28, 31, 34-37 & Table 2; NM-EX 402, EPCWID Accounting Records; NM-EX 500, EPCWID Water Allocation Records (2006-2016); NM-EX 510, 2008 Operating Agreement, Tables 2 & 4.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 001: <i>See</i> General Objection #1. NM-EX 402: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 500: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 24. The discussion is lengthy, and is incorporated herein by reference.	Full Supply - page 7; *No citation to any UMFs in body of Full Supply Brief	N/A
194	Apportionment No. 80	In 2010, after it had an opportunity to study the new operations and method for allocating water, New Mexico raised several concerns about the 2008 Operating Agreement. One of New Mexico's primary concerns was that the 2008 Operating Agreement was inconsistent with the Compact because it did not allocate 57% of Project supply to New Mexico lands.	NM-EX 517, Letter from John D'Antonio, State Engineer, State of New Mexico to Michael Connor, Commissioner, United States Bureau of Reclamation (Mar. 4, 2010); NM-EX 002, D'Antonio Decl. at ¶ 11.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-517: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed in part. In paragraph 79 of NM MSJ on Apportionment, New Mexico asserts that the 2008 Operating Agreement “changed the way that water was allocated between the two Districts, and therefore the amount of water that was available for lands in New Mexico and Texas.” In paragraph 80, New Mexico asserts its “primary concern” with the 2008 Operating Agreement is that it is not consistent with the Compact and does not allocate 57 percent of Project supply to New Mexico lands. In fact, under the Operating Agreement New Mexico has received more water than it otherwise should have based solely on the D2 Curve prior to implementation of the Operating Agreement. This is demonstrated by the graph in Figure 11. The blue x's show total Project surface water diversions between 2008 and 2016; the black x's show the total amount of diversions, including groundwater pumping by New Mexico, for the same period. See Brandes Dec. in Opp. to NM at TX_MSJ_007312, paragraphs 1 – 9, 25-26, 30-31.	Apportionment - page 16; 46	N/A
195	N/A	Under the 2008 Operating Agreement, Reclamation delivers New Mexico's surface water to Texas without a required export permit required by New Mexico law.	See NM-EX 007, D'Antonio 2d Decl. at ¶¶ 37(a), 50-51.	<b>Yes. See NM Response to TX at: - page 33</b>	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #195 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
196	N/A	Reclamation's implementation of the D3 Allocation method and the 2008 Operating Agreement have reduced the delivery efficiency and performance of the Rio Grande Project as a whole.	NM-EX 100, Barroll Rep. at 77-78; NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 18-19.	<b>Yes. See NM Response to TX at: - page 66, 69</b>	NM-EX-100, 103: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the D3 allocation and 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #196 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 47
196	N/A	Reclamation's implementation of the D3 Allocation method and the 2008 Operating Agreement have harmed New Mexico by substantially reducing its surface water supply in the LRG, and negatively impacting the water balance of groundwater systems of the Rincon and Mesilla basins.	NM-EX 100, Barroll Rep. at 71-77.	<b>Yes. See NM Response to TX at: - page 66, 69</b>	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	See above (196)	N/A	Opp to US - page 47
196	N/A	EPCWID and Texas have benefitted by gaining a disproportionate share of surface water.	See NM-EX 006, Barroll 2d Decl. at ¶¶ 71-72.	<b>Yes. See NM Response to TX at: - page 66, 69</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). To the extent the stated “facts” address Compact delivery obligations, they constitute improper legal conclusions in whole or in part.	See above (196)	N/A	Opp to US - page 47



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197	Apportionment No. 81	After attempts to resolve the issues related to the 2008 Operating Agreement failed, in 2011, New Mexico filed suit in federal district court seeking to have the 2008 Operating Agreement set aside.	NM-EX 520, Complaint for Declaratory and Injunctive Relief, New Mexico v. United States, No. 1:11-cv-00691 (D.N.M. Aug. 8, 2011).	<b>Yes. See NM Response to TX at: - page 54, 60</b>	<b>From TX's 12/22/20 Filings:</b> NM-EX-520: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	<u>Apportionment - page 16; 46</u>	Opp to US - page 13
198	N/A	Texas filed the present original action in reaction to New Mexico's 2011 federal district lawsuit.	NM-EX 212, Gordon Dep. (July 15, 2020) at 109:2-13; NM-EX 224, Schmidt-Petersen Dep. (June 29, 2020) at 40:19-41:12. [Apportionment No. 82].	<b>Yes. See NM Response to TX at: - page 54, 60</b>	NM-EX-212, 224: <i>See</i> General Objection #8.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico's position on Texas's "intent" in filing this original action is not relevant to the issues raised in Texas's Motion for Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 13
199	N/A	Prior to the creation of the Project, farmers in the Rio Grande Valley below what is now Elephant Butte Reservoir recognized that groundwater was a potential source of irrigation supply.	NM-EX 011, Stevens 2d Decl. at ¶ 4; NM-EX 006, Barroll 2d Decl. at ¶ 14.	<b>NO</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 13 - page 20
200	N/A	In 1903, the New Mexico Agricultural Experiment Station reported that irrigators in Texas around El Paso had “been compelled to turn their attention to other water supplies or else abandon all agricultural work. ... they have demonstrated the fact that crops can be profitably grown by irrigation from wells tapping the underflow in the Rio Grande Valley.” The report noted that observation wells at the station demonstrated “an ample quantity” of groundwater for irrigation described as “reliable and secure,” “subject to no fluctuations,” and “sufficient to meet all reasonable needs.”	NM-EX 332, John J. Vernon and Francis E. Lester, Agricultural Experiment Station, N.M. College of Agriculture and Mechanical Arts, Bulletin No. 45, Pumping for Irrigation from Wells, at 12-14, 56 (1903); NM-EX 011, Stevens 2d Decl. at ¶ 4.	<b>NO</b>	n/a	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 13 - page 20
201	N/A	Prior to construction of the Rio Grande Project, irrigators in the Mesilla Valley in New Mexico developed a number of groundwater wells to supply irrigation water during period of low and variable surface supply.	See NM-EX 011, Stevens 2d Decl. at ¶¶ 4, 30; NM-EX 006, Barroll 2d Decl. at 14; NM-EX 332, John J. Vernon and Francis E. Lester, Agricultural Experiment Station, N.M. College of Agriculture and Mechanical Arts, Bulletin No. 45, Pumping for Irrigation from Wells, at 55 (1903); NM-EX 342, Charles S. Slichter, United States Geological Survey, Water Supply and Irrigation Paper No. 141, Observations on the Ground Waters of the Rio Grande Valley, at 22 (1905).	<b>NO</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 13 - page 20
202	N/A	By 1940, after decades of Project operations, very few of these pre-Project wells remained in operation. However, documentation with the New Mexico Office of the State Engineer suggests that at least some irrigation wells were drilled in the 1920s and 1930s.	See NM-EX 006, Barroll 2d Decl. at ¶ 14; see also NM-EX 427, C.S. Conover, United States Geological Survey, Geological Survey Water Supply Paper 1230, Ground-Water Conditions in the Rincon and Mesilla Valleys and Adjacent Areas in New Mexico, at 9, 103-105, 107 (1954).	<b>NO</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-427: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 20



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203	N/A	Following construction of the Rio Grande Project storage and diversion works there was continuing interest, in both New Mexico and Texas, in developing groundwater resources to supplement existing irrigation supplies.	See, e.g., NM-EX 348, D.C. Henny, Board of Engineers, Rio Grande Project, Report on Water Supply and Project Area High Line Canal Construction Power Development and City Water Supplies, at 35 (Nov. 1919); NM-EX 349, Harold Conkling, United States Reclamation Service, Water Supply of the Rio Grande River, at TX_00182134 (June 18, 1919); see also NM-EX 113, Stevens Reb. Rep. at 11 (discussing Conkling’s conclusion that groundwater pumping to expand the irrigable acreage of the project would only have affected surface supply in the two lowest supply years in the 58 years of data examined); NM-EX 337, D.C. Henny, Board of Engineers, Rio Grande Project, Report on Water Supply and Project Area High Line Canal Construction Power Development and City Water Supplies, at 35-36 (Nov. 1919).	NO	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 20; 21
204	N/A	Ultimately, as of 1938, scientific understanding of the relationship between groundwater and surface water in the Rio Grande Basin was limited and conflicting. The RGJI did not include an investigation of groundwater resources below Elephant Butte.	NM-EX 113, Stevens Reb. Rep. at 4, 6, 8; NM-EX 011, Stevens 2d Decl. at ¶ 31. See, e.g., NM-EX 342, Charles S. Slichter, United States Geological Survey, Water Supply and Irrigation Paper No. 141, Observations on the Ground Waters of the Rio Grande Valley, at 27-29 (1905); NM-EX 347, E.L. Barrows, Report of Seepage Study on Rio Grande Between Elephant Butte Dam and Leasburg Dam, at 1 (Nov. 26-28, 1928).	NO	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 20
205	N/A	Reclamation’s and other parties’ conduct in the post-Compact drought during the 1940s and 1950s indicates that no contemporary actor believed that the Compact prohibited groundwater pumping.	See NM-EX 113, Stevens Reb. Rep. at 15; NM-EX 112, Stevens Rep. at 92-94.	NO	NM-EX-113, 112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 27; 32
206	N/A	In the middle 1940s, the Project faced its first significant period of drought following execution of the Compact. As a result, Project Storage levels fell below average, causing Reclamation to warn of potential water rationing.	See NM-EX 006, Barroll 2d Decl at ¶ 15; NM-EX 100, Barroll Rep. at 19; NM-EX 112, Stevens Rep. at 94. See, e.g., NM-EX 334, Barroll Excerpts of Rio Grande Project Histories 1946-50, at NM_00027487, NM_00027860, NM_00027861, NM_00028290, NM_00029140.	NO	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 24; 32
207	N/A	Drought conditions worsened in the 1950s.	See NM-EX 006, Barroll 2d Decl. at ¶ 17.	NO	n/a	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 32
207	N/A	Beginning in 1951, Reclamation announced limits to per-acre allocations to Project lands.	See id.; NM-EX 419, Barroll Excerpts of Rio Grande Project Histories 1951-1957, at NM_00029503-07 (indicating, in a series of “Water Announcements,” that “strict rationing” would be mandatory and setting allotments).	NO	NM-EX-419: See General Objection #8; Fed R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 32

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
208	N/A	Facing limited surface supply allocations, farmers within EBID and EPCWID both developed groundwater pumping capacity in order to supplement their irrigation supplies.	See NM-EX 006, Barroll 2d Decl. at ¶ 15; NM-EX 100, Barroll Rep. at 19-20 (citing NM-EX 424, C.S. Conover, United States Geological Survey, Geological Survey Water Supply Paper 1230, Ground-Water Conditions in the Rincon and Mesilla Valleys and Adjacent Areas in New Mexico (1954); NM-EX 432, Narenda N. Gunaji, Engineering Experiment Station, New Mexico State University, Groundwater Conditions in Elephant Butte Irrigation District (Nov. 1961)); NM-EX, 437, Ralph E. Smith, United States Geological Survey, Bulletin 5603, Ground-Water Resources of the El Paso District, Texas, at 10 (Feb. 1956).	NO	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-424, 432, 437: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 24; 32 - page 43 - page 48 - page 54
209	N/A	Reclamation recognized that groundwater pumping would be necessary to sustain the Project and actively encouraged the development of groundwater pumping capacity to supplement irrigation supply in the Project throughout the 1950s.	See NM-EX 006, Barroll 2d Decl. at ¶¶ 15, 17-18; NM-EX 113, Stevens Reb. Rep. at 19-20; NM-EX 100, Barroll Rep. at 21; see also, e.g., NM-EX 419, Barroll Excerpts of Rio Grande Project Histories 1951, at NM_00029507 (Aug. 1951 “Water Announcement” that encourages “[w]ater users who have pumps of good capacity that will supply their needs” to “arrange for transfer of part of their unused allotment water to those who are in need of additional water”); NM-EX 417, Barroll Excerpts of Rio Grande Project Histories 1951-1957, at NM_00029819, NM_00029823, NM_00030599, NM_00030890 (similar); NM-EX 420, Barroll Excerpts of Rio Grande Project Histories 1951-1957, at NM_00029465, NM_0029793 (permitting Project farmers to distribute pumped groundwater through Project conveyances).	Yes. See NM Response to TX at: - page 50	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-113, 100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-419, 417, 420: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Project operations do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #209 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 24; 25; 32; 33 - page 43 - page 48 - page 54
210	N/A	The use of groundwater to supplement surface supplies allowed the Project to remain economically viable during the drought.	See NM-EX 006, Barroll 2d Decl. at ¶¶ 19-20; see also, e.g., NM-EX 420, Barroll Excerpts of Rio Grande Project Histories 1951-1957, at NM_00029783; NM_00030086, NM_00030570, NM_00030862, NM_00030870, NM_00030873, NM_00031107 (discussing the importance of well water irrigation to the economic production of the Project during the drought).	NO	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-420: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 24; 25; 32 - page 43 - page 48 - page 54
211	N/A	In the course of the drought, Reclamation and the irrigation districts developed a greater understanding of the effects of groundwater pumping on surface supply in the region.	See NM- EX 011, Stevens 2d Decl. at ¶ 32; NM-EX 006, Barroll 2d Decl. at ¶ 16.	NO	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 32 - page 54

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
211	N/A	Hydrologist Clyde S. Conover conducted an investigation at the request of EBID and published a report in 1954; he concluded that “[g]round water obtained by pumping in the Rincon and Mesilla Valleys does not represent an additional supply or new source of water to the project, but rather a change in method, time, and place of diversion of the supplies already available” and that pumping in successive dry years would draw from groundwater storage and require a period of recharge in later years in order for return flows to recover.”	NM-EX 113, Stevens Reb. Rep. 18; NM-EX 424, C.S. Conover, United States Geological Survey, Geological Survey Water Supply Paper 1230, Ground-Water Conditions in the Rincon and Mesilla Valleys and Adjacent Areas in New Mexico, at 2-3, 128 (1954).	NO	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 32 - page 54
211	N/A	Other follow-up studies built upon this analysis and refined Conover’s conclusions regarding groundwater recharge.	See NM-EX 113, Stevens Reb. Rep. 20 (summarizing the work of Narendra N. Gunaji, who concluded that Conover overestimated the length of time necessary to recharge the groundwater after surface supplies return to normal).	NO	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 32 - page 54
212	N/A	Despite a coalescing understanding of the interrelationship between groundwater pumping and surface supplies, the historical record contains no evidence that any party objected to the increase in groundwater extraction during 1940s and 1950s.	NM-EX 113, Stevens Reb. Rep. at 15-18; see also NM-EX 241, Miltenberger Dep. (June 8, 2020) at 93:10-19, 114:9-115:23; NM- EX 240, Kryloff Dep. (Aug. 6, 2020) at 111:1-112:14.	NO	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-241, 240: <i>See</i> General Objection #8.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 27; 29; 32
213	N/A	Instead, the improving scientific understanding about the groundwater supply in this period led Reclamation to develop and support a system conjunctive (joint) management of the overall supply.	See NM-EX 113, Stevens Reb. Rep. at 15.	NO	NM-EX-113: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 25; 27; 32
213	N/A	Indicative of this development, overall agricultural demand for water in EBID was effectively stable over the period from 1950 forward, with the amount of groundwater pumping increasing or decreasing year over year to meet the deficit of between demand and available surface supply.	See NM-EX 101, Barroll Reb. Rep. at 9- 10, Figs. 9-10. Cf. NM-EX 243, Esslinger Dep. (Aug. 17, 2020) 112:4-113.	NO	NM-EX-101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-243: <i>See</i> General Objection #8.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 25; 27; 32
214	N/A	In the 1960s and 1970s, Reclamation continued to encourage the Districts to develop groundwater pumping capacity to satisfy irrigation demands during periods of low supply.	NM- EX 006, Barroll 2d Decl. at ¶ 21; see also, e.g., NM-EX 242, Esslinger Dep. (Aug. 18, 2020) at 22:8-24:18 (concerning Reclamation support for EBID’s well drilling program); NM- EX 441, Salopek Aff. at ¶¶ 8-9 (Mar. 3, 2004) (describing development of EBID’s well-drilling program); NM-EX 422, License Agreement with El Paso County Water Improvement District No. 1 for Installation of 4 Water Wells (Feb. 1, 1978).	NO	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-242: <i>See</i> General Objection #8. NM-EX-441, 422: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 25; 32; 33 - page 48
215	N/A	Reclamation’s adoption of the D1/D2 allocation method formalized its recognition of conjunctive use within the Project. Because the method is premised upon diversion data from a period after the significant development of groundwater in the 1940s and 1950s, it presumes the hydrologic conditions that existed during and following the development of significant conjunctive use within the Project, and acceptance of the methodology is consistent with a common understanding that groundwater pumping for supplemental irrigation purposes is permitted under the Compact. Stated differently, the D1/D2 allocation effectively “grandfathered” in any effects that groundwater pumping during 1951-78 had on Project operations.	See NM-EX 006, Barroll 2d Decl. at ¶ 57; NM- EX 107, Lopez Rep. at 35-36; NM-EX 108, Lopez Reb. Rep. at 14; see also NM-EX 101, Barroll Reb. Rep. at 1; NM-EX 007, D’Antonio 2d Decl. at ¶ 20; NM-EX 012, Sullivan Decl. at ¶¶ 17, 112.	Yes. See NM Response to TX at: - page 51	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-107, 108, 101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Project operations and the D1/D2 allocation procedure do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #215 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 17/18; 27; 28; 29; 33; 34 - page 48



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216	N/A	During the D1/D2 period, Texas continued to support conjunctive use within the Project. For instance, when New Mexico declared a groundwater basin in the Lower Rio Grande, limiting further depletions and increasing administrative oversight, Texas urged New Mexico to reconsider, citing the importance of conjunctive use within the Project.	See NM-EX 107, Lopez Rep. at 33; NM-EX 418, Transcript of Proceedings from 43rd Annual Meeting of the Rio Grande Compact Commission, at 66-67 (Mar. 25, 1982).	<b>Yes. See NM Response to TX at: - page 33, 51</b>	NM-EX-107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. NM-EX-418: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Project operations and the D1/D2 allocation procedure do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #216 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 18 - page 55
217	N/A	Prior to 1980, the conjunctive use of surface and groundwater in the Project was hydrologically stable. In drought years, farmers in both Texas and New Mexico, with the encouragement of Reclamation, pumped groundwater to supplement the surface supply delivered by the Project. In wetter years, the groundwater table throughout the Project rebounded quickly from the effects of that pumping. The state line was irrelevant.	See NM-EX 007, D'Antonio 2d Decl. at ¶ 12; see also NM-EX 506, Cortez Aff. at ¶ 8; NM-EX 100, Barroll Rep. at §§2.1, 2.2.	<b>Yes. See NM Response to TX at: - page 33</b>	NM-EX-007: <i>See</i> General Objection #3. NM-EX-506: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping and the Project, including actions taken by the Office of the State Engineer, do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #217 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	Opp to US - page 33 - page 48
218	N/A	Groundwater rights for irrigation in the LRG were fully developed prior to 1980, during the drought periods of the 1950s, 1960s and 1970s, in cooperation with Reclamation. During that time, it is likely that almost every acre of land in EBID was irrigated by groundwater.	See Barroll 2d Decl. at ¶ 79.	<b>Yes. See NM Response to TX at: - page 52</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping and the Project, including actions taken by the Office of the State Engineer, do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #218 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
219	N/A	In about 1980, the City of El Paso expressed its intent to appropriate a one hundred-year supply of groundwater in New Mexico. In response to this development and to the recent changes in Project operations following transfer of title to the diversion structures from Reclamation to the Districts, the New Mexico State Engineer declared New Mexico's LRG Underground Water Basin in 1980 and extended it in 1982.	See NM-EX 007, D'Antonio 2d Decl. at ¶¶ 5(b), 8-9, 14-15; see also NM-EX 427, Office of the State Engineer, State Engineer Order No. 126 (Sept. 1980); NM-EX 428, Office of the State Engineer, State Engineer Order No. 135 (Sept. 1982).	<b>NO</b>	NM-EX-007: <i>See</i> General Objection #3. NM-EX-427: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 31 - page 54
220	N/A	Since 1980, the New Mexico State Engineer has not permitted any new appropriations of groundwater in the groundwater basins supporting the Rio Grande. A review of all permits since 1980 revealed only three exceptions totaling 13.865 AF per year, as compared to approximately 350,000 to 375,000 AF of total annual use in the Lower Rio Grande Basin in New Mexico.	See NM-EX 010, Serrano Decl. at ¶ 21; NM-EX 007, D'Antonio 2d Decl. at ¶¶ 18-19.	<b>Yes. See NM Response to TX at: - page 32, 33</b>	NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding permits in the Lower Rio Grande, including actions taken by the Office of the State Engineer, do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #220 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	Opp to US - page 31 - page 55

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
221	N/A	Under NMSA 1978 §72-12-5 (1931), water rights users who claim a priority date earlier than the September 1980 LRG Groundwater Basin declaration could file with the State Engineer individual “declarations” describing their claimed existing rights and were encouraged to do so by the State Engineer. The vast majority of these declarations reflect that the subject wells were drilled during the droughts of the 1950s and 1970s.	See NM-EX 007, D’Antonio 2d Decl. at ¶ 19.	<b>Yes. See NM Response to TX at: - page 33</b>	NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objections, undisputed.	N/A	Opp to US - page 31
222	N/A	In total, since the New Mexico State Engineer declared the Lower Rio Grande Basin in 1980, the New Mexico State Engineer has permitted approximately 2,678 changes to existing irrigation well water rights. Each one went through the rigorous and comprehensive analysis required by the permitting process to assure that the change would not cause new depletions to the river or to other water rights owners.	See NM-EX 010, Serrano Decl. at ¶ 18; NM-EX 007, D’Antonio 2d Decl. at ¶ 21.	<b>Yes. See NM Response to TX at: - page 33</b>	NM-EX-010: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 702: the statement in the Serrano Decl. constitutes improper opinion testimony because it is not based on sufficient facts and is a mere conclusion. NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding water management activities undertaking by the State of New Mexico do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #222 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 31
223	N/A	The average annual volume of LRG groundwater pumped in New Mexico during the period 1979-2005 (109,600 AF) was much less than during the period 1951-78 (179,100 AF).	NM-EX 012, Sullivan Decl. at ¶ 20; see also NM-EX 123 Spronk Reb. Rep. at 27.	<b>NO</b>	NM-EX-123: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 54
224	N/A	Farmers in both districts continue to rely, as they have throughout the history of the Project, upon conjunctive management of groundwater and surface supply.	See NM-EX 006, Barroll 2d Decl. at ¶ 28; see also NM-EX 242, Esslinger Dep. (Aug. 18, 2020) at 30:12-46:4; NM-EX 245, King Dep. (May 18, 2020) at 91-92, 101.	<b>NO</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll cites historical records in support of her conclusion but has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-242, 245: <i>See</i> General Objection #8.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 26 - page 43
224	N/A	For instance, EPCWID maintains 62 high capacity wells, and its constituents have an unknown additional number of private wells for supplemental irrigation use.	NM_EX 100, Barroll Rep. 25; see also NM-EX , Reyes Dep. (Aug. 31, 2002) 36:22-50:2 (discussing the wells and their use during the 2003-04 drought).	<b>NO</b>	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX, Reyes Dep: <i>See</i> General Objection #8.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 26 - page 43
225	N/A	Reflecting EBID’s reliance on conjunctive use, when EBID and EPCWID negotiated the 2008 Operating Agreement, EBID’s principals understood that a primary effect of the agreement would be to “grandfather” levels of groundwater pumping in New Mexico commensurate with the D2 period.	See NM-EX 108, Lopez Reb. Rep. at 17; NM-EX 101, Barroll Reb. Rep. at 43; see, e.g., NM-EX 208, Esslinger Dep. (Aug. 18, 2020) at 157:11-24.	<b>NO</b>	NM-EX-108: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-208: <i>See</i> General Objeciton #8.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 29
226	N/A	Following the 2008 Operating Agreement, New Mexico farmers were forced to increase their groundwater use steeply in order to maintain their crops and balance reduced surface water allocations. In years in which the Project has a full supply available, the 2008 Operating Agreement has reduced EBID’s allocation by more than one-third, leading to increased groundwater pumping in full supply and decreased opportunity for recharge. As a result, drawdowns to the aquifer in the New Mexico portion of the Project accelerated, and the aquifer fell to unprecedentedly low levels.	See NM-EX 007, D’Antonio 2d Decl. at ¶ 47; NM-EX 006, Barroll 2d Decl. at ¶¶ 26, 65, 81; see also, e.g., NM-EX 100, Barroll Rep. at §§6.3, 6.4, 9.3, 9.4, 9.5.	<b>Yes. See NM Response to TX at: - page 35</b>	NM-EX-007: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Mr. D'Antiono has not been offered as an expert in New Mexico's groundwater use and has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #226 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 48; 52

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
227	N/A	Nevertheless, current irrigation well pumping levels in in low supply years in New Mexico are comparable to irrigation well pumping during the 1950s drought. The comparison may be visualized in the following figure:	[FIGURE 3. ANNUAL IRRIGATION PUMPING (AF/YR)] NM-EX 006, Barroll 2d Decl. at ¶ 26.	NO	n/a	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 52
228	N/A	Many water rights owners in the Lower Rio Grande Basin in New Mexico have informed the Water Master that the reduction in surface water effected by the 2008 Operating Agreement has had significant negative impacts on them, including increased pumping costs and loss of their crops and property improvements.	See NM-EX 010, Serrano Decl. at ¶¶ 35, 36.	Yes. See NM Response to TX at: - page 32	NM-EX-010: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 702; Fed. R. Evid. 801(c), hearsay.: the statement in the Serrano Decl. it is not based on sufficient facts and is a mere conclusion. Mr. Serrano merely provides vague anecdotes regarding "conservations with water right owners."	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #228 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
229	N/A	Excepting only irrigation and single family wells, the New Mexico State Engineer issued permits for 252 wells in the Mesilla and Rincon Basins from 2016 to December 14, 2020. Each such application is subject to comprehensive analysis and, if permitted, are permitted with conditions such that the well causes no new depletions of the Rio Grande or to other water rights owners.	See NM-EX 010, Serrano Decl. at ¶ 18.	NO	NM-EX-010: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602. The declarant lacks sufficient personal knowledge to opine that all permits includes conditions "such that the well causes no new depletions of the Rio Grande."	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
230	N/A	As of 2020, there are approximately 3,000 total irrigation, commercial, mutual domestic, and industrial wells in the Lower Rio Grande in New Mexico. The New Mexico State Engineer meters every well within this group and enforces compliance with water rights limits.	See NM-EX 010, Serrano Decl. at ¶¶ 14, 20.	NO	n/a	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
231	N/A	There is no indication, from the historical record, that any party, prior to this litigation, ever formally requested that New Mexico curtail groundwater pumping below Elephant Butte.	See NM-EX 008, Lopez 2d Decl. at ¶ 39; see also NM-EX 002, D’Antonio Decl. at ¶ 18; NM-EX 004, Schmidt-Petersen Decl. at ¶ 16; NM-EX 218, Lopez Dep. (July 7, 2020) at 140:13-141:13; NM- EX 204, D’Antonio Dep. (June 25, 2020) at 169:1-7.	NO	NM-EX-008, 002, 004: These declarants lack sufficient personal knowledge to assert that "any party . . . ever formally requested that New Mexico curtail groundwater pumping below Elephant Butte." NM-EX-218, 204: <i>See</i> General Objection #8.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 27; 33
232	N/A	Irrigation well pumping in the LRG portions of New Mexico has been fully metered since 2008. Metering data, combined with surface water delivery data, indicates that New Mexico farmers are applying an average of 4.0 AF of combined surface and groundwater to each irrigated acre. By comparison, EPCWID allots 4.0 AF per acre of surface water to its farmers in full-supply years, plus unknown amounts of groundwater.	NM-EX 006, Barroll 2d Decl. at ¶ 22; see also NM-EX 423, 2001 Rio Grande Project Third Party Implementing Contract Among the U.S., EPCWID, and the City of El Paso at 49, 59 (Apr. 10, 2001)	Yes. See NM Response to TX at: - page 34, 63	NM-EX-423: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the groundwater pumping and impacts on Rio Grande Project supply do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #232 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
233	N/A	Prior to 1938, municipalities in New Mexico below Elephant Butte Reservoir relied on groundwater for municipal and industrial use.	See NM-EX 011, Stevens 2d Decl. at ¶ 30; NM-EX 112, Stevens Rep. at 83-84; NM-EX 318, Harlow M. Stafford et al., Rio Grande Joint Investigation Part I: General Report of the Rio Grande Joint Investigation, at 11, 14-16 (1937) (cataloguing use by “Cities, Towns, and Villages”); NM-EX 350, R.A. Scalapino, Ground-Water Resources of the El Paso Area, Texas, at 1 (1949) (discussing “[a]n intensive study of ground-water resources of the El Paso area” for municipal use in 1935).	NO	NM-EX-112: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A



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234	N/A	Following the Compact, cities and towns in the LRG have grown in their reliance on groundwater supplies. Without groundwater supplies, cities and towns would be left without water for their citizens. Outside of established public utilities, domestic wells also continue to supply waters to individual homes.	See NM-EX 006, Barroll 2d Decl. at ¶ 28.	NO	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
235	N/A	For instance, Las Cruces has pumped groundwater since the late nineteenth century, gradually increasing their diversions as the population of the city increased.	NM-EX 013, Wilson Decl. at ¶ 4.	NO	n/a	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 52
235	N/A	Within New Mexico, the City of Las Cruces currently pumps approximately 15,000 AF/yr from wells in the Mesilla basin and 4,000 AF/yr from wells in the Jornada del Muerto, an adjoining but hydrologically disconnected basin.	See NM-EX 006, Barroll 2d Decl. at ¶ 29; NM-EX 013, Wilson Decl. at ¶ 6.	NO	n/a	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 52
235	N/A	However, given the amount of water the City of Las Cruces returns to the Rio Grande it supplies a net gain to the river system.	NM-EX 013, Wilson Decl. at ¶ 6.	NO	NM-EX-013: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Wilson has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 52
236	N/A	Treated effluent from Las Cruces, regardless of source, returns to the Rio Grande below Las Cruces and is available for diversion as part of Project Supply.	See NM-EX 006, Barroll 2d Decl. at ¶ 29; NM-EX 013, Wilson Decl. at ¶ 6.	NO	n/a	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 52
237	N/A	In New Mexico, groundwater pumping for municipal and industrial use comprises only 10 to 20% of total groundwater pumping, with the remainder being irrigation use. In contrast, Texas groundwater pumping for municipal and industrial use comprises far more than half of all groundwater pumping in the state within the Compact area (although a lack of metering data makes it difficult to ascertain the exact percentage).	See NM-EX 006, Barroll 2d Decl. at ¶ 30.	Yes. See NM Response to TX at: - page 56	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion regarding Texas groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the groundwater pumping in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #237 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
238	N/A	Texas pumps groundwater for municipal and industrial uses from its part of the Mesilla basin. Texas does not provide comprehensive metering data, but the Canutillo well field is known to pump approximately 24,000 AF/yr, based on data by the El Paso Water Utility, for El Paso municipal use. A portion of this water returns to the Rio Grande as return flow below the Courchesne gage and is accounted for as Project Supply.	See NM-EX 006, Barroll 2d Decl. at ¶¶ 31-32; NM-EX 100, Barroll Rep. at 30.	Yes. See NM Response to TX at: - page 37, 56, 57	NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the groundwater pumping in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #238 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 26
239	N/A	The City of El Paso and Ciudad Juarez also pump large amounts of water from the Hueco bolson. The extent of this pumping has resulted in a cone of depression more than 100 feet deep and has been identified as a significant problem since the 1980s. The rate of pumping increased substantially since 1938. There has been no recovery in these groundwater levels.	See NM-EX 006, Barroll 2d Decl. at ¶¶ 32, 45; NM-EX 012, Sullivan Decl. at ¶ 36; see also NM-EX 117, Greg Sullivan, LRG Wells and Groundwater Level Drawdowns (Sept. 15, 2020); NM-EX 121, Spalding & Morrissey Rep. at fig. 5.4.	Yes. See NM Response to TX at: - page 37, 56, 57	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion regarding Texas groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). Her statement relies entirely on opinions of other New Mexico experts in this litigation. NM-EX-117, 121: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the groundwater pumping in the Hueco Bolson in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #239 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 63

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
240	N/A	The decline in groundwater levels in the El Paso Valley due to municipal pumping by El Paso and Ciudad Juarez has caused the groundwater to become disconnected from the surface water in northern portions of the valley. This means that Project water conveyance losses in the disconnected area are at a maximum and are not affected by variations in pumping.	See NM-EX 012, Sullivan Decl. at ¶ 47.	Yes. See NM Response to TX at: - page 56, 57	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602. The statement is irrelevant for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the groundwater levels in the El Paso Valley do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #240 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
241	N/A	Non-irrigation groundwater pumping in Texas and Mexico in basins connected to the Rio Grande has averaged 86,700 AF/y and 150,900 AF/y, respectively during the period 2013-17. In comparison, non-irrigation groundwater in New Mexico is only about 37,000 AF/y, of which 17,000 AF/y returns to the Rio Grande as return flow.	See NM-EX 012, Sullivan Decl. at ¶ 16; see also NM-EX 122, Spronk Rep. at 51, 205-07.	Yes. See NM Response to TX at: - page 56	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602. The statement is irrelevant for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge. NM-EX-122: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding non-irrigation groundwater pumping in Texas and Mexico do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's counterclaims and its apportionment motion address New Mexico's legal position on the interrelationship of the Project, Downstream Contracts and the Compact. CSMF #241 may relate to New Mexico's motion(s), but does not materially respond to Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 63
242	N/A	When water is pumped from a stream-connected aquifer, that pumping eventually depletes water from the stream system, but the timing of the depletion, the location where that depletion occurs, and the amount of depletion depends on a variety of hydrologic conditions as well as the location and construction of the pumping wells. Stream depletions generally consist of reduction of gains to streams and to irrigation drains, and increases in the seepage loss from natural streams and irrigation conveyances.	NM-EX 006, Barroll 2d Decl. at ¶ 34.	Yes. See NM Response to TX at: - page 56		Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Additionally, the fact is cited in New Mexico's opposition to Texas's Motion for Partial Summary Judgment for the proposition that any "depletion limit" my apply to both New Mexico and Texas. CSMF #242 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
243	N/A	The Rio Grande within the LRG and El Paso Valley has historically had both gaining and losing reaches. During times of low Project Supply and high groundwater pumping, the losses from the Rio Grande are higher than in high-Project-supply years with low groundwater pumping. Groundwater pumping in both New Mexico and in the Texas Mesilla impact the gains and losses from the Rio Grande in the Mesilla Valley. Groundwater pumping in both Texas and Mexico impact the gains and losses from the Rio Grande in the El Paso Valley.	NM-EX 006, Barroll 2d Decl. at ¶ 35; see also NM-EX 122, Spronk Rep. at 92-98; NM-EX 121, Spalding & Morrissey Rep. at fig. 9.3.	Yes. See NM Response to TX at: - page 56	NM-EX-122, 121: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Additionally, the fact is cited in New Mexico's opposition to Texas's Motion for Partial Summary Judgment for the proposition that any "depletion limit" my apply to both New Mexico and Texas. CSMF #243 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
244	N/A	Stream depletion by groundwater pumping does not necessarily equate to impairment of other water rights, even in a fully appropriated stream system. The impact of stream depletion upon other water users depends on a number of factors, including hydrologic conditions and river operations. In the case of the Project, stream depletions that occur during years of adequate supply do not impact downstream deliveries. Instead, as a function of normal operations of the Project, Reclamation adjusts releases from Caballo as necessary, taking into account the gains and losses occurring between Caballo dam and the points of delivery, to ensure that all the water that has been ordered is in fact delivered.	NM-EX 006, Barroll 2d Decl. at ¶ 36; see also NM- EX 100, Barroll Rep. at § 2.2, Appx. B.	Yes. See NM Response to TX at: - page 56	NM-EX-100: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Additionally, the fact is cited in New Mexico's opposition to Texas's Motion for Partial Summary Judgment for the proposition that any "depletion limit" my apply to both New Mexico and Texas. CSMF #244 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 44; 46

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
245	N/A	Groundwater pumping in both New Mexico and Texas (and Mexico as well) may cause stream depletions. These stream depletions may cause Reclamation to release more water from Project Storage in order to deliver water to Project beneficiaries than otherwise.	NM-EX 006, Barroll 2d Decl. at ¶¶ 37, 52-53; see also NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 4; NM-EX 122, Spronk Rep. at 92-93.	<b>Yes. See NM Response to TX at: - page 56, 58</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion regarding Texas groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). Her statement that pumping "may" cause depletions is vague and hypothetical.. NM-EX-103, 122: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Additionally, the fact is cited in New Mexico's opposition to Texas's Motion for Partial Summary Judgment for the proposition that any "depletion limit" may apply to both New Mexico and Texas. CSMF #245 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 44
246	N/A	Groundwater pumping by in Texas and New Mexico intercepts return flows that are associated with Project irrigation and reduces the flow in Project drains. But, these effects do not necessarily translate to effects upon Project deliveries. Prior to 2006, stream depletions occurring in Project full-supply years would have no effect on either the water allocated to the Districts or the water delivered to the Districts in those full-supply years. Furthermore, if Project Supplies remained adequate until the next spill of the Project reservoirs, then the Project beneficiaries would not experience any later reduction in deliveries resulting from those stream depletions. However, stream depletions that occurred in the years leading up to a shortage could reduce the Project allocations in the subsequent water-short years, but this depends on many factors, including increased reservoir evaporation and spills that may occur in the interim.	NM-EX 006, Barroll 2d Decl. at ¶¶ 38-39, 52-53; see also NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 3-9; NM-EX 122, Spronk Rep. at 71-72; NM-EX 012, Sullivan Decl. at ¶¶ 13, 17-18, 25.	<b>Yes. See NM Response to TX at: - page 56, 57, 58</b>	NM-EX-122: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support generally describing stream depletion do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. Additionally, the fact is cited in New Mexico's opposition to Texas's Motion for Partial Summary Judgment for the proposition that any "depletion limit" may apply to both New Mexico and Texas. CSMF #246 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 44; 45; 46 - page 63
247	N/A	The effects of groundwater pumping in New Mexico on Project deliveries are intermittent and variable for a number of reasons. First, pumping in New Mexico has varied substantially since it developed in the early 1950s, with higher amounts of pumping in low Project supply years and lower amounts of pumping in full supply years. Second, in full supply years, the Districts received all water they ordered, up to their total allocations, so pumping does not impact deliveries in those years. Third, some of the river depletions from pumping occur during the winter when the Project is not making deliveries. Fourth, the amount and timing of Rio Grande depletions from pumping depends on many factors, including the locations and depth of the wells, the timing and amount of pumping, aquifer characteristics, the interaction of ground water and surface water, Project and reservoir operations, including spills, and many other factors.	See NM-EX 012, Sullivan Decl. at ¶¶ 13-14, 102; see also NM-EX 122, Spronk Rep. at 194, 318; NM-EX 123, Spronk Reb. Rep. at 58-59.	<b>Yes. See NM Response to TX at: - page 56, 61</b>	NM-EX-102, 122, 123: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the impact of New Mexico groundwater pumping on Rio Grande Project deliveries do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #247 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 44; 46



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248	N/A	Groundwater pumping in Texas has lowered groundwater levels, intercepted irrigation return flows, dried up drains, and increased seepage losses from the Rio Grande, impacting the entire Project. These effects have increased depletions to surface water flows and increased conveyance losses in delivering Project water. In fact, these drawdowns may have disconnected the stream system from the aquifer in the El Paso area, maximizing the seepage losses in this area.	See NM-EX 006, Barroll 2d Decl. at ¶ 42, 44; NM-EX 012, Sullivan Rep. at ¶ 36; see also NM-EX 101, Barroll Reb. Rep. at 18; NM-EX 122, Spronk Rep. at 65.	<b>Yes. See NM Response to TX at: - page 36, 56, 58</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion regarding Texas groundwater pumping for purposes of Rule 56 summary judgment, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602. The statement is irrelevant for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge. NM-EX-101, 122: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #248 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
249	N/A	The effects of groundwater pumping in Texas impact the Project in New Mexico. The Rincon-Mesilla Basin and El Paso Valley are hydraulically connected by the surface flow of the Rio Grande. Additionally, the Project is operated as a single unit. As such, the effects of pumping on surface flows in Texas can propagate throughout the Project area and impact deliveries of Project water to New Mexico.	See NM-EX 012, Sullivan Decl. at ¶¶ 72-73.	<b>Yes. See NM Response to TX at: - page 36, 56, 57</b>	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602. The statement is irrelevant for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #249 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
250	N/A	Prior to 2006, groundwater levels in the Rincon and Mesilla valleys were relatively high and fluctuated from season to season due to the application of irrigation water from the Rio Grande on Project lands resulting recharge to the groundwater system. Groundwater levels also fluctuated from year to year based on Project Supply levels: in low supply years groundwater levels declined, and in subsequent full-supply years groundwater levels recovered. Following the adoption of D3 Allocation in 2006 and the 2008 Operating Agreement, groundwater levels in the Rincon and Mesilla valleys have declined in years of low Project supply but have not recovered in any substantive way in subsequent full-supply years.	NM-EX 006, Barroll 2d Decl. at ¶¶ 44, 66; see also NM-EX 100, Barroll Rep. at 73-77; NM-EX 012, Sullivan Decl. at ¶¶ 13, 45.	<b>Yes. See NM Response to TX at: - page 36</b>	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater pumping and the D3 allocation procedure do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #250 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 14; - page 47; 48; 52
251	N/A	D3 Allocation and the 2008 Operating Agreement starve the upper part of the Project of water, causing reductions in total Project return flows and depleting the groundwater supply in the upper part of the Project. The net result is a reduction in Project delivery efficiency and a reduction in total Project Supply. NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 14-20. To use the analogy proposed by Texas, the 2008 Operating Agreement itself "reduces the size of the pizza" that represents Project Supply upon which the two District rely.	See NM-EX 006, Barroll 2d Decl. at ¶ 64.	<b>Yes. See NM Response to TX at: - page 36, 67, 68</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses Compact apportionment to Texas, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the 2008 Operating Agreement and the D3 allocation procedure do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #251 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 14; - page 47; 48; 52

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
252	N/A	Because the D3 Allocation method reduces EBID's allocation to account for any real or apparent discrepancies in Project performance relative to the 1951-1978 period, groundwater pumping in Texas reduces EBID's allocation. Analyses using the ILRG Model indicate that Project water diversions by New Mexico during 2006 - 2017 were reduced by an average of 15,500 AF/y by Texas pumping, an average of 94,200 AF/y by imposition of the 2008 OA, an average of 86,300 AF/y by increases in Project operational waste (mostly in Texas), and by an average of 72,400 AF/y by changes in EPCWID operations. Due to nonlinearities in the ILRG Model, the foregoing impacts are not fully independent and additive.	NM-EX 012, Sullivan Decl. at ¶¶ 15, 18; see also NM-EX 006, Barroll 2d Decl. at ¶ 41; NM-EX 123, Spronk Reb. Rep. at 379, 533, 577, 709.	<b>Yes. See NM Response to TX at: - page 36, 60</b>	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401, 602. The statement is irrelevant for purposes of a motion for summary judgment and/or response and/or not within Mr. Sullivan's personal knowledge. NM-EX-123: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the 2008 Operating Agreement and the D3 allocation procedure do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #252 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 47; 48 - page 61; 63
253	N/A	Using the New Mexico Integrated Lower Rio Grande Model ("ILRGM") to calculate the impact of New Mexico pumping on Texas, New Mexico experts have shown that the impact is much smaller than the reallocation of Project water away from New Mexico the 2008 Operating Agreement.	See NM-EX 006, Barroll 2d Decl. at ¶¶ 68, 80; see also NM-EX 103, Barroll 2d Suppl. Reb. Rep. at vi- vii, 9, 20.	<b>Yes. See NM Response to TX at: - page 36, 68</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-103: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #253 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 48
254	N/A	Results from the ILRGM show that had New Mexico had been allocated 57% percent of Project Supply from 2006 through 2017, the combined effects of that allocation increase. The effects of the improved groundwater conditions and Project performance would have resulted in New Mexico being allocated a total of 1,053,393 AF more than under D3 Allocation, or, on average, 94,000 AF more per year from 2006 through 2017. In effect, the D3 Allocation and the 2008 Operating Agreement have reduced New Mexico surface water allocation by 88,000 AF/yr on average since 2006.	See NM-EX 006, Barroll 2d Decl. at ¶ 69; see also NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 15-16.	<b>Yes. See NM Response to TX at: - page 36, 60, 69</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-103: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and Rio Grande Project supply do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #254 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 48 - page 61
255	N/A	The ILRGM also calculates that if New Mexico had been allocated 57% of Project Supply, the resulting improved groundwater conditions and associated reduction in river seepage—and increased drain flow—would have resulted in a total increase in Project Supply deliveries of 863,730 AF during 2006 through 2017, or an average of 72,000 AF/year.	See NM-EX 006, Barroll 2d Decl. at ¶ 70; NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 18.	<b>Yes. See NM Response to TX at: - page 36</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-103: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and Rio Grande Project supply do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #255 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 48
256	N/A	Had EBID been allocated and delivered its 57% share of Project Supply since 2006, the Project as a whole would have benefitted from an improvement in groundwater conditions in New Mexico. This improvement in groundwater conditions would have increased Project delivery efficiency and thereby further increased EBID's allocation and delivery at little cost to EPCWID.	See NM-EX 006, Barroll 2d Decl. at ¶ 62; see also NM-EX 103, Barroll 2d Suppl. Reb. Rep. at 18-19.	<b>Yes. See NM Response to TX at: - page 36, 67</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). NM-EX-103: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding EBID water delivery and Rio Grande Project supply do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #256 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 48

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
257	N/A	The ILRGM model simulates the impact of pumping on surface water flows and the effects on Project operations and all simulated processes that result as the changed conditions ripple spatially and temporally through the model just as they would in the real world. This is referred to as “re-operation” and is an essential element of the ILRG Model that is not present in the ground water model of the Rincon and Mesilla basins developed by the Texas experts (“Texas Model”).	See NM-EX 012, Sullivan Decl. at ¶ 61.	Yes. See NM Response to TX at: - page 68	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401. The statement is irrelevant for purposes of a motion for summary judgment.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and Rio Grande Project supply do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #257 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
258	N/A	New Mexico’s ILRGM is the best available tool for evaluating the claims and counterclaims in this case because it is the only hydrologic model available to evaluate the effects of groundwater pumping and changes in historical Project operations on Project deliveries to Texas and New Mexico. The ILRGM is superior to the Texas Model because (a) it simulates the entire Lower Rio Grande area from Elephant Butte Reservoir to Fort Quitman, (b) it employs monthly stress periods that allow it to simulate the important seasonal variations in groundwater and surface water flows, and (c) it is capable of simulating the dynamic response of Project operations to changes in flow throughout the entire Project area. Conversely, the Texas Model fails to accurately evaluate pumping effects to Project deliveries because it does not simulate the dynamic response of Project reservoir releases to changes in flows that occur without pumping, provides no simulations for the area downstream of the El Paso gage and thus cannot simulate the feedback response from a large part of the Project area, and uses annual stress periods that prevent distinguishing impacts that  occur during the Project release period (irrigation season) from impacts that occur during the non-irrigation season. In short, the absence of dynamic simulation of Project operations renders the Texas Model of no utility in analyzing the key issue presented in this case: impacts to Project deliveries from groundwater pumping and changes in historical Project operations.	NM-EX 012, Sullivan Decl. at ¶ 118; see also NM-EX 122, Spronk Rep. at 9, 113.	Yes. See NM Response to TX at: - page 68, 69	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401. The statement is irrelevant for purposes of a motion for summary judgment. NM-EX-122: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model and Rio Grande Project deliveries do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #258 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
259	N/A	The ILRG Model has been used to run several model scenarios that evaluate New Mexico’s pumping, Texas’s pumping, the impacts of implementing the 2008 OA, the impacts of changes to historical Project operations and accounting in EPCWID on overall Project allocations, and various potential conjunctive use scenarios. The ILRG Model is the only model in this case that is capable of analyzing and quantifying the effects of these scenarios. The Texas Model is incapable of such analyses.	NM-EX 012, Sullivan Decl. at ¶ 119; see also NM-EX 122, Spronk Rep. at 47.	Yes. See NM Response to TX at: - page 68	NM-EX-012: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 401. The statement is irrelevant for purposes of a motion for summary judgment. NM-EX-122: See General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the Integrated Lower Rio Grande Model, 2008 Operating Agreement and Rio Grande Project deliveries do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #259 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
260	N/A	The City of El Paso diverts a considerable amount of Project Water for municipal purposes in the El Paso Valley. Much of this municipal use has replaced Project irrigation in Texas.	See NM-EX 423, Rio Grande Project Implementing Third-Party Contract among the U.S., EPCWID, and the City of El Paso at 48, 74 (Apr. 10, 2001).	NO	NM-EX-423: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A



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260	N/A	Some of these municipal diversions are a result of contractual agreements allowing for the exchange of Project Supply for municipal effluent, which is then considered to be “District Supply” for EPCWID, and not “Project Supply.”	See NM- EX 006, Barroll 2d Decl. at ¶ 54.	NO	n/a	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
261	N/A	Municipal effluent and return flows associated with the municipal use of Project Water in the El Paso Valley were originally accounted as part of Project Supply.	NM-EX 100, Barroll Rep. at 30; NM-EX 428, Letter from Filiberto Cortez, Manager, Bureau of Reclamation, to Edd Fifer (July 8, 1999).	<b>Yes. See NM Response to TX at: - page 16, 37, 58</b>	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-428: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project supply, return flows in the State of Texas, and municipal use in the El Paso Valley do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #261 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 61
261	N/A	However, Texas now intercepts these municipal Project return flows by diverting them directly into EPCWID conveyances and this water is no longer accounted for as Project Supply.	NM-EX 100, Barroll Rep. at 30, 49-50; NM-EX 102, Barroll Reb. Rep. at 24-36.	<b>Yes. See NM Response to TX at: - page 16, 37, 58</b>	NM-EX-100, 102: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay; Fed. R. Evid. 401, 402, the statements in the Barroll Rep. are irrelevant to the motion for summary judgment.	Same (261 above)	N/A	Opp to US - page 61
261	N/A	The reduction in irrigation return flows in Texas, as well as the fact that Reclamation no longer charges EPCWID for the use of any such return flows, means that a greater portion of EPCWID’s charged diversions consist of reservoir releases than occurred previously. This change may increase EPCWID’s draw on the reservoir, reducing the amount of water available for allocation to both New Mexico and Texas.	See NM-EX 006, Barroll 2d Decl. at ¶ 55.	<b>Yes. See NM Response to TX at: - page 16, 37, 58</b>	NM-EX-006: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602, 702(a); Dr. Barroll has insufficient personal knowledge to assert this opinion for purposes of Rule 56 summary judgment to the extent the statement addresses modeling work by other New Mexico experts, and at trial she would lack qualification to offer this opinion as an expert under Fed. R. Evid. 702(a). The statement that there "may" be drawdown is vague and hyothetical.	Same (261 above)	N/A	Opp to US - page 61
262	N/A	The treatment of municipal effluent in the El Paso Valley stands in stark contrast to the treatment of municipal effluent in New Mexico. Municipal effluent from the City of Las Cruces is available for diversion at Mesilla Dam and at the Project diversion heading farther downstream, and the diversion of that effluent is accounted as Project Supply.	See NM-EX 006, Barroll 2d Decl. at ¶ 55.	<b>Opp to Texas - page 37</b>	n/a	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding municipal effluent in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #262 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 52
263	Notice No. 26	Reclamation compiles an annual written report to the Rio Grande Compact Commission and gives an annual oral report at the Rio Grande Compact Commission meeting regarding operation of the Rio Grande Project. These reports contain general, annualized data concerning the operation of the Project, such as the total amount of release from Project Storage, the amount of water in Project Storage, and the annual allocations to each district.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 44:6-45:4, 102:21-103:6; NM-EX 203, Cortez Dep. (July 31, 2020) at 209:20-210:14. E.g., NM-EX 516, Bureau of Reclamation, Calendar Year 2009 Report to the Rio Grande Compact Commission, 59-67 (Mar. 2010); NM-EX 003, Lopez Decl. at ¶¶ 14-15.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 202, 203: <i>See</i> General Objection #8. NM-EX 516: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NM-EX 003: <i>See</i> General Objection #2.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Notice - page 5; 17; 18	N/A

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264	Notice No. 27	Reclamation also provides to the State of New Mexico courtesy copies of periodic reports concerning Rio Grande Project operations, including reservoir elevations, flow readings, and storage transfers between reservoirs.	See NM-EX 203, Cortez Dep. (July 31, 2020) at 220:2-222:4. E.g., NM-EX 513, Letter from Filiberto Cortez, Manager El Paso Field Division, Bureau of Reclamation, to Water Accounting Division, U.S. Section, International Boundary Water Commission (Sept. 29, 2009); NM-EX 514, Letter from Filiberto Cortez, Manager El Paso Field Div., U.S. Bureau of Reclamation, to Lieutenant Col. Kimberly Colloton, District Engineer, Army Corps of Engineers (Sept. 29, 2009).	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-203: <i>See</i> General Objection #8. NM-EX 513, 514: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, undisputed.	Notice - page 5; 17; 18	N/A
265	N/A	Reclamation also provides to the Engineer Advisers to the Rio Grande Compact Commission a report of Project accounting. Prior to 2006, that Project accounting amounted to Compact accounting below Elephant Butte Reservoir for New Mexico (EBID) and Texas (EPCWID). After the changes in Project operations in 2006, Project accounting provides a record of the deviation from the apportionment in the Compact.	See NM-EX 008, Lopez 2d Decl. at ¶ 31; see also NM-EX 107, Lopez Rep. at 24, 30, 32, 44-48.	<b>Yes. See NM Response to TX at: - page 24, 25</b>	NM-EX-008: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part. NM-EX-107: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding Project accounting do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #265 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but Project accounting is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
266	Notice No. 28	New Mexico does not, however, receive daily operation information such as the daily release amount, the order amounts, or the timing of releases to satisfy orders.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 114:6-22; NM-EX 002, D’Antonio Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15; NM-EX 100, Barroll Rep. at 47; NM-EX 107, Lopez Rep. at 73 (“Historically, Reclamation information and data about Project operations has not routinely been shared with the States.”).	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 002, 004, 100: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 –These individuals lack sufficient personal knowledge to assert that no agent or representative of the State of New Mexico has ever received information. NM-EX 107: <i>See</i> General Objection #7; General Objection #2; Fed. R. Evid. 801(c), hearsay. All: Fed. R. Evid. 401 – Even if true, New Mexico not receiving daily operation information is irrelevant. The “fact” has no tendency to make it any less probable that New Mexico was on notice as a general matter that its groundwater pumping would be depleting surface flows destined for Texas.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion its ground water pumping was causing to Texas’s apportionment was by means of daily Project operational information. New Mexico’s depletions have been ongoing since the early 1950s, and New Mexico’s actual notice of the impact from its ground water pumping on Texas’s apportionment is reflected in the following documents, with the earliest dated 1947: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891.	Notice - page 5; 17; 18	N/A
267	Notice No. 29	Likewise, New Mexico does not receive any routine notice that any specific water order, whether at the district or individual farmer level, has or has not been filled.	NM-EX 002, D’Antonio Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 002, 004: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 – These declarants lack sufficient personal knowledge to assert that no agent or representative of the State of New Mexico has ever received such information. Fed. R. Evid. 401 – Even if true, lack of routine notice about specific water orders is irrelevant. That has no tendency to make it any less probable that New Mexico was on notice as a general matter that its groundwater pumping would be depleting surface flows destined for Texas.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion its ground water pumping was causing to Texas’s apportionment was by means of daily Project operational information. New Mexico’s depletions have been ongoing since the early 1950s, and New Mexico’s actual notice of the impact from its ground water pumping on Texas’s apportionment is reflected in the following documents, with the earliest dated 1947: <i>See</i> Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63 - 77. TX_MSJ_6492-6891.	Notice - page 5; 17; 18	N/A

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268	Notice No. 30	Accordingly, New Mexico has no means to know, at any given time, what proportion of the water in the Rio Grande below Elephant Butte Reservoir is destined for delivery to EBID, EPCWID, or Mexico.	NM-EX 002, D’Antonio Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 002, 004: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 – These declarants lack sufficient personal knowledge to assert that no agent or representative of the State of New Mexico is capable of knowing such information. Fed. R. Evid. 401 – Even if true, the proportionate quantities of water in the river at any given time has no tendency to make it any less probable that New Mexico was on notice as a general matter that groundwater pumping would be depleting surface flows destined for Texas.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. This paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion its ground water pumping was causing to Texas’s apportionment was by means of daily Project operational information. New Mexico’s depletions have been ongoing since the early 1950s, and New Mexico’s actual notice of the impact from its ground water pumping on Texas’s apportionment is reflected in the following documents, with the earliest dated 1947: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891.	Notice - page 5-6; 17; 18	N/A
269	Notice No. 31	Further, New Mexico has no means to know, at any given time, whether the Rio Grande Project releases are in fact delivered to Texas in satisfaction of EPCWID orders.	NM-EX 002, D’Antonio Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15; see also NM-EX 211, Gordon Dep. (July 14, 2020), 180:14-181:7.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 002, 004: Fed. R. Civ. P. 56(c)(4); Fed. R. Evid. 602 – These declarants lack sufficient personal knowledge to assert that no agent or representative of the State of New Mexico is or ever has been capable of knowing such information. NM-EX 211: See General Objection #8. All: Fed. R. Evid. 401 – Even if true, lack of knowledge about specific releases at any given point in time is irrelevant. That has no tendency to make it any less probable that New Mexico was on notice as a general matter that groundwater pumping would be depleting surface flows destined for Texas.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. EX-211: Cited “evidence” does not support the proposition. Further, this paragraph is misleading insofar as it suggests that the only way that New Mexico had notice of the depletion its ground water pumping was causing to Texas’s apportionment was by means of daily Project operational information. New Mexico’s depletions have been ongoing since the early 1950s, and New Mexico’s actual notice of the impact from its ground water pumping on Texas’s apportionment is reflected in the following documents, with the earliest dated 1947: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891.	Notice - page 6; 17; 18; 31	N/A
270	Notice No. 32	Conversely, to the extent that any amount of water released from Project supply pursuant to a specific order is intercepted prior to delivery, New Mexico would have no basis to know of a shortage to either District without explicit notice.	NM-EX 002, D’Antonio Decl. at ¶ 17; NM-EX 004, Schmidt-Petersen Decl. at ¶ 15.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-002, 004: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 – These declarants lack sufficient personal knowledge to assert that no agent or representative of the State of New Mexico is or ever has been capable of knowing this information.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. New Mexico’s depletions have been ongoing since the early 1950s, and New Mexico’s actual notice of the impact from its ground water pumping on Texas’s apportionment is reflected in the following documents, with the earliest dated 1947: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891.	Notice - page 6; 17; 18	N/A
271	Notice No. 33	From 1938 through the inception of this litigation, New Mexico did not receive any notice, with the potential exception of one complaint concerning surface water diversions (discussed below), whether from Reclamation, Texas, EBID, or EPCWID, that the conduct of water users in New Mexico prevented the United States from making delivery of Project water called for by Texas (EPCWID).	NM-EX 002, D’Antonio Decl. at ¶ 18; NM-EX 004, Schmidt-Petersen Decl. at ¶ 16; see NM-EX 218, Lopez Dep. (July 7, 2020) at 140:13-141:13; NM-EX 204, D’Antonio Dep. (June 25, 2020) at 169:1-7.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 002, 004: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 – These declarants lack sufficient personal knowledge to assert that no agent or representative of the State of New Mexico has ever received such information. NM-EX 204: See General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. EX-204: Cited “evidence” does not support the proposition; Gordon Dec. in Opp. To NM at TX_MSJ_007269-007274. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891.	Notice - page 6	N/A
272	Notice No. 34	Filiberto Cortez, El Paso Field Division Manager for Reclamation, testified that Reclamation has only made one communication to New Mexico that notified New Mexico of concerns regarding water use in New Mexico potentially impacting Project deliveries.	See NM- EX 202, Cortez Dep. (July 30, 2020) at 111:13-112:10.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 202: See General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. EX-202: Cited “evidence” does not support the proposition; New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891.	Notice - page 6; 19	N/A



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273	Notice No. 35	Specifically, in April 2012, Reclamation informed the New Mexico Office of the State Engineer that the Districts and Reclamation had identified a number of river pumps that were “impacting the deliveries” from the Rio Grande Project to EPCWID and Mexico.	See NM-EX 521, Email from Filiberto Cortez, Manager El Paso Field Div., U.S. Bureau of Reclamation, to Rolf Schmidt-Peterson, Rio Grande Bureau Basin Manager, N.M. Interstate Stream Comm’n (Apr. 11, 2012).	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 521: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment.	Notice - page 6; 19	N/A
274	Notice No. 36	The New Mexico State Engineer performed an investigation of the water pumps at issue and responded on September 21, 2012. The investigation concluded that all but two of the sites were operating in compliance with adjudicated water rights that are senior to the Project’s or approved groundwater withdrawal permits. With regard to the remaining two sites, the investigation concluded that the pumps in question were no longer operable, and it was not possible to determine if any diversion occurred at either site.	See NM-EX 523, Letter from Scott A. Verhines, State Engineer, State of N.M., to Ed Drusina, Comm’r, Int’l Boundary and Water Comm’n, and Mike Hamman, Albuquerque Area Manager, U.S. Bureau of Reclamation (Sept. 21, 2012).	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 523: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment.	Notice - page 6; 19	N/A
275	Notice No. 37	The New Mexico State Engineer further invited Reclamation to “continue to notify” the State of any “potential unlawful diversions” so that the State Engineer could “initiate appropriate water administration actions, if necessary, to prevent the unlawful diversion of water.”	See NM- EX 523, Letter from Scott A. Verhines, State Engineer, State of N.M., to Ed Drusina, Comm’r, Int’l Boundary and Water Comm’n, and Mike Hamman, Albuquerque Area Manager, U.S. Bureau of Reclamation (Sept. 21, 2012).	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 523: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment.	Notice - page 6; 19	N/A
276	Notice No. 38	Following this invitation, Reclamation made no further reports to the New Mexico State Engineer concerning improper surface water diversions.	See NM-EX 202, Cortez Dep. (July 30, 2020) at 119:7-120:9.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-202: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment. <del>NM-EX 202: cited evidence does not support the proposition.</del>	Notice - page 7; 19	N/A
277	Notice No. 39	Other than this surface pump investigation, Reclamation has not requested that New Mexico investigate or curtail any illegal water use, whether surface or groundwater.	See NM-EX 202, Cortez Dep. (July 30, 2020), at 113:11-18.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX-202: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment. <del>NM-EX 202: cited evidence does not support the proposition.</del>	Notice - page 7; 19	N/A
278	Notice No. 40	Further, Reclamation has not informed New Mexico that it was unable in any year to deliver Project water that Texas (EPCWID) ordered due to the actions of New Mexico water users.	See NM-EX 202, Cortez Dep. (July 30, 2020) at ¶ 19.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 202: <i>See</i> General Objection #8. NM-EX 002: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 – The declarant lacks sufficient personal knowledge to assert that no agent or representative of the State of New Mexico ever received such information.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas’s apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas’s apportionment. <del>NM-EX 202: cited evidence does not support the proposition.</del>	Notice - page 7; 19	N/A

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279	Notice No. 41	Likewise, Texas has not, through the Rio Grande Compact Commission, provided any notification that Texas's Project deliveries were shorted in any year.	See NM-EX 211, Gordon Dep. (July 14, 2020) at 192:10-193:2. NM-EX 002, D'Antonio Decl. at ¶ 18; NM-EX 004, Schmidt-Petersen Decl. at ¶ 17.	NO	<b>From TX's 12/22/20 Filings:</b> NM-EX 002, 004: Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602 – The declarants lack sufficient personal knowledge about “any year” since the inception of the Rio Grande Compact Commission. NM-EX 211: <i>See</i> General Objection #8.	<b>From TX's 12/22/20 Filings:</b> Subject to the stated objections, disputed. New Mexico has been on notice about the effect of its pumping on Texas's apportionment since at least 1947 as shown in the following documents: See Miltenberger Dec. in Opp. to NM at TX_MSJ_007371, paragraphs 1-7, 63-77. TX_MSJ_6492-6891. Also, one example of formal notice of illegal river pumping is irrelevant to the notice New Mexico has had for decades of its ground water pumping impact on Texas's apportionment. Schmidt-Peterson Depo. 6/29/2020, 41:20-25 ("I mean, the first day I showed up on the job, which was in December of 1999, Joe G. Hanson, the then Compact commissioner, stood up and said, you know, deliver or we'll sue. And that's just kind of a constant refrain in the entire time that I've been there no matter what the supply is.")	Notice - page 7; 19	N/A
280	N/A	The TX Rio Grande Compact Commissioner is a governor appointee.	NM-EX 247, Gordon Dep. (July 14, 2020) at 25:5-9.	NO	NM-EX-247: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
280	N/A	The current Commissioner has no water background and is a tax attorney.	Id. at 17:19-25; 18:1-10 (no education in water administration, hydrology, or interstate water compacts).	NO	NM-EX-247: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
281	N/A	Groundwater use in Texas is subject to little direct regulation.	Cf. Edwards Aquifer Auth. v. Day, 369 S.W.3d 814, 823–33 (Tex. 2012) (discussing the law of capture)	NO	Edwards Aquifer Auth. v. Day: Case law/legal opinions do not constitute factual “evidence” as contemplated by Fed. R. Civ. P. 56(c).	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
281	N/A	The Texas Water Development Board (“TWDB”) is the state agency statutorily charged with groundwater oversight, but it has no management, compliance, or enforcement authority.	NM-EX 249, French Dep. (Aug. 31, 2020) at 16:5-25; 17:1-16 , 43:1-44:25.	NO	NM-EX-249: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
281	N/A	Likewise, the Texas Commission on Environmental Quality (“TCEQ”), which administers surface water rights, maintains a Groundwater Division, but it lacks any compliance or enforcement authority.	NM-EX 250 Mills Dep. (Aug. 27, 2020) at 46:21-23, 52:4-5.	NO	NM-EX-250: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
282	N/A	TCEQ, with inputs by the TWDB, has the authority to establish Priority Groundwater Management Areas (“pageMA”) based on a determination that there are critical groundwater problems, including water shortage issues.	NM-EX 250, Mills Dep. (Aug. 27, 2020) at 21:6-18, 54-21-25; 55:1-17.	NO	NM-EX-250: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
283	N/A	Groundwater Conservation Districts (“GCD”) are political entities charged with management of groundwater resources, including permitting of groundwater wells, creating management plans, implementing policies and procedures to conserve groundwater resources and protecting property rights related to groundwater.	NM-EX 249, French Dep. (Aug. 31, 2020) 49:12-14; NM-EX 250, Mills Dep. (Aug. 27, 2020) 37:1-17; 22-25.	NO	NM-EX-249, 250: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
283	N/A	PGMA stakeholders have the authority to create GCDs. Additionally, the Texas legislature may create a GCD on the recommendation of the TCEQ.	NM-EX 250, Mills Dep. (Aug. 27, 2020) 25:9-12	NO	NM-EX-250: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
284	N/A	All groundwater management, including well permitting, requires a local GCD.	NM-EX 249, French Dep. (Aug. 31, 2020) 49:12-14; NM-EX 250, Mills Dep. (Aug. 27, 2020) 37:1-17; 22-25.	NO	NM-EX-249, 250: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
284	N/A	TWDB has no management, compliance, or enforcement authority over a GCD once created or its groundwater management plan.	NM-EX 249, French Dep. (Aug. 31, 2020) 36:3-4; 43:1-6; 43:7-12; 43:13-18; 43:19-25; 44:1-8; 44:15-25.	NO	NM-EX-249: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
285	N/A	In 1998 TCEQ designated El Paso County as PGMA 5.	NM-EX 250, Mills Dep. (Aug. 27, 2020) 27:11-24.	NO	NM-EX-250: <i>See</i> General Objection #8.	New Mexico's stated fact, and supporting evidence, are not cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
285	N/A	pageMA 5 does not contain any GCDs.	NM-EX 249, French Dep. (Aug. 31, 2020) 34:12-17; 35:2; 49:1-6.	NO	NM-EX-249: <i>See</i> General Objection #8.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
285	N/A	Accordingly, there is not a groundwater management plan in place for pageMA 5.	NM-EX 249, French Dep. (Aug. 31, 2020) 46:1-6.	NO	NM-EX-249: <i>See</i> General Objection #8.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
286	N/A	Texas’s water administration, or lack thereof, within the Texas portion of the Project has not been consistent with a 1938 Condition. Changes that may affect Project conditions and impact Project depletions in Texas include the following: a. Texas water users have made extensive use of groundwater for both Project and non-Project uses (with United States knowledge); b. Texas and EPCWID have availed themselves of the benefits of the United States’ Rectification and Canalization projects; c. Texas farmers have improved irrigation efficiencies and changed their crop mix to higher water-use crops; d. EPCWID has transferred the purpose of use of a significant portion of its Project Supply from irrigation to municipal supply through Miscellaneous Purposes contracts with Reclamation but without properly accounting for return flows; e. EPCWID, working with Reclamation but without review by other Compact parties, has negotiated the American Canal Extension credit for its benefit and to the detriment of EBID; f. Similarly, EPCWID, working with Reclamation but without review by other Compact parties, has deemed treated wastewater effluent as “non-Project” water— retaining its use but without being charged under its Project allocation; g. EPCWID has opted to forego use of available drain flows, instead calling for additional water out of Project Storage; h. EPCWID has sold Project water to Hudspeth County Conservation and Reclamation District No. 1 ; and i. EPCWID, working with EBID, Reclamation and Texas but without the other Compact parties, negotiated the 2008 Operating Agreement which effectively changed Project operation and allocation contrary to the Compact to New Mexico’s detriment.	See NM-EX 008, Lopez 2d Decl. at ¶ 35; see also NM-EX 100, Barroll Rep. at 20, 22, 31-52, Appxs. C-D; NM-EX 107, Lopez Rep. at 26, 43-66.	NO	NM-EX-008: Fed. R. Evid. 602, Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part. The declarant lacks personal knowledge regarding Texas water administration. NM-EX-100, 107: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 61
287	N/A	In contrast to New Mexico’s comprehensive administrative scheme with regard to groundwater, Texas water authorities have not made efforts to control groundwater use in Texas, despite the detrimental effects of Texas’ extensive groundwater use on historical Project Supply.	See NM-EX 007, D’Antonio 2d Decl. at ¶ 56, NM-EX; see also NM-EX 606, Comparison of Select New Mexico and Texas Water Administration Facts.	Yes. See NM Response to TX at: - page 33	NM-EX-007: Fed. R. Evid. 602, Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part. The declarant lacks personal knowledge regarding Texas water administration. NM-EX-606: <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding groundwater use in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #287 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A



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288	N/A	Under the New Mexico Constitution and law, water in New Mexico belongs to the public. Private rights to the use of New Mexico's unappropriated waters may be established by appropriation of water for beneficial use. Beneficial use is the basis, measure, and limit of a right to use water, and priority of appropriation gives the better right.	See NM-EX 007, D'Antonio 2d Decl. at ¶ 1; see also N.M. Const. art. XVI, §§ 2, 3; NMSA 1978 §§ 72-12-1 and -2 (1931).	<b>Yes. See NM Response to TX at: - page 9, 32, 33</b>	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. N.M. Const. and NMSA: The cited constitutional provision and statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding general principles of New Mexico water law do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #288 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
288	N/A	The provisions of beneficial use and priority of appropriation were first formally adopted into New Mexico law in the 1907 Water Code, NMSA 1978, Title 72 (1907 Water Code). Based on a Model Water Code, the 1907 Water Code was enacted in anticipation of the Project in the LRG; it also places centralized authority in a State Engineer, a cabinet-level position and gives him broad and exclusive powers.	See NM-EX 007, D'Antonio 2d Decl. at ¶¶ 2-3; see also NM-EX 434, Ira Clark, Water in New Mexico: A History of its Management and Use 118-119 (1987).	<b>Yes. See NM Response to TX at: - page 9, 32, 33</b>	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-434: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Same (288 above)	N/A	N/A
289	N/A	Since 1907, a permit from the State Engineer is required to develop a water right for surface water use.	See NM-EX 007, D'Antonio 2d Decl. at ¶ 5(a); see also NMSA 1978 §§72-5-1 through -7.	<b>Yes. See NM Response to TX at: - page 32, 33, 34, 35</b>	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NMSA: The cited statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding general principles of New Mexico water law do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #289 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
289	N/A	Since 1931, a similar permit requirement applies to all groundwater use within a "declared" groundwater basin.	See NM-EX 007, D'Antonio 2d Decl. at ¶ 5(b); NMSA 1978 §72-12-1, et seq ; see also State ex rel. Bliss v. Dority, 1950-NMSC-066, 55 N.M. 12, 225 P.2d 1007; Office of the State Engineer, Article 7: Declared Underground Water Basins (2006).	<b>Yes. See NM Response to TX at: - page 32, 33, 34, 35</b>	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NMSA and State ex. rel. <i>Bliss v. Dority</i> : The cited statute and case law do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Same (289 above)	N/A	N/A
290	N/A	The State Engineer serves as the Secretary to New Mexico's Interstate Stream Commission (ISC), which oversees New Mexico's compact obligations and expends significant resources to ensure compliance with the Rio Grande Compact and seven (7) other interstate compacts.	See NM- EX 007, D'Antonio 2d Decl. at ¶ 5(g); see also NM-EX 009, Schmidt-Petersen 2d Decl., ¶¶ 4-5, 13-17.	<b>Yes. See NM Response to TX at: - page 32, 33, 34, 35</b>	NM-EX-007: To the extent the cited evidence states Mr. D'Antonio's opinion regarding compliance with the Rio Grande Compact, the cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-009: See General Objection #5.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #290 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
291	N/A	The State Engineer also serves as New Mexico's Rio Grande Compact Commissioner and has broad authority to address Compact compliance and administrative issues together.	See NM- EX 007, D'Antonio 2d Decl. at ¶¶ 5(i), 8, 9. See also NM-EX 009, Schmidt-Petersen 2nd Decl., passim.	<b>Yes. See NM Response to TX at: - page 32, 33</b>	NM-EX-007: To the extent the cited evidence states Mr. D'Antonio's opinion regarding compliance with the Rio Grande Compact, the cited evidence does not support the stated "facts" in whole and/or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-009: See General Objection #5.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #291 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A

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292	N/A	Since 1907, the State Engineer has actively exercised broad powers to administer waters throughout the State of New Mexico in an exclusive and comprehensive administrative system.	See NM-EX 007, D’Antonio 2d Decl. at ¶¶ 4-5, 11; see also Tri-State Generation and Transmission v. D’Antonio, 2012-NMSC-039, ¶ 24, 289 P.3d 1232; NMSA 1978 § 72-2-1 (1907).	Yes. See NM Response to TX at: - page 32, 33	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part. Transmission v. D’Antonio & NMSA: The cited case and statute do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #292 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
292	N/A	In exercise of this authority, the State of New Mexico has a robust and comprehensive system for water administration and enforcement in the LRG. New Mexico has successfully employed this system to ensure compliance with the Compact and stands ready to utilize that system to enforce the orders of the Court in this case, whatever those orders may be.	See NM-EX 007, D’Antonio 2d Decl. at ¶¶ 5, 57-58; see also NM-EX 009, Schmidt-Petersen 2d Decl.; NM-EX 010; Serrano Decl.; NM-EX 006, Barroll 2d Decl. at ¶¶ 43, 78.	Yes. See NM Response to TX at: - page 32, 33	NM-EX-007, 010, 006: To the extent the cited evidence states Mr. D’Antonio, Mr. Serrano or Dr. Barroll's opinions regarding compliance with the Rio Grande Compact, the cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part. NM-EX-009: See General Objection #5.	see above (292)	N/A	N/A
293	N/A	The State Engineer established seven local district offices across New Mexico. District IV in Las Cruces, New Mexico, administers water in the Lower Rio Grande, including the New Mexico portion of the Project.	See NM-EX 007, D’Antonio 2d Decl. at ¶¶ 6-7, 25.	Yes. See NM Response to TX at: - page 32, 33	n/a	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #293 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
294	N/A	Following the United States’ appropriation of water rights in 1906 and 1908, the State Engineer has considered the Lower Rio Grande (“LRG”) to be fully appropriated and has not permitted any new appropriation of surface waters.	See NM-EX 007, D’Antonio 2d Decl. at ¶¶ 16-17; NM-EX 006, Barroll 2d Decl. at ¶ 75.	Yes. See NM Response to TX at: - page 32, 33	NM-EX-007: See General Objection #3.	Subject to the stated objections, the fact is cited in New Mexico's response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #294 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A	N/A
295	N/A	Further, after declaring the LRG groundwater basin in 1980, the State Engineer has not allowed any new rights or changes to existing rights to use groundwater without first finding, through the permitting process, that surface water was protected from any new depletions.	See NM-EX 007, D’Antonio 2d Decl. at ¶¶ 16-17, 21-23; NM-EX 235, Rule 30(b)(6) Dep. of the State of New Mexico by and through Thacker (Apr. 18, 2019) at 22:9-23:4.	Yes. See NM Response to TX at: - page 32, 33	NM-EX-007: See General Objection #3. NM-EX-235: See General Objection #8.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties and the actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #295 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A

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295	N/A	Through the permitting process, the Office of the State Engineer (“OSE”) rigorously evaluates an application to either appropriate water or to change an existing water right to determine whether it will impair existing rights, in addition to considering whether the proposed change is contrary to conservation within New Mexico or detrimental to the public welfare. If the application is found to impair other water rights, the permit may be denied, or the amount of water requested reduced, or the permit may be issued with conditions to address the impairment or depletion, which may include a requirement that any resulting depletions of surface water be offset. The permitting process ensures that no new depletions to the fully appropriated Rio Grande steam system are allowed.	See NM-EX 007, D’Antonio 2d Decl. at ¶ 21; see also NMSA 1978 §72-12-3 (1931, as amended through 2019).	<b>Yes. See NM Response to TX at: - page 32, 33</b>	NM-EX-007: <i>See</i> General Objection #3. NMSA: The cited statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	see above (295)	N/A	N/A
296	N/A	In 2003, the New Mexico Legislature enacted the Active Water Resource Management statute, NMSA 1978 § 72-2-9.1 (2003). Thereafter, the State Engineer created and promulgated Active Water Resources Management regulations (AWRM Framework Rules). The AWRM Framework Rules provide rules of statewide applicability and allow for the adoption of specific rules that could be promulgated separately for individual Water Master Districts.	See NM-EX 007, D’Antonio 2d Decl. at ¶¶ 38-41; see also 19.25.13.7(C) 1-4 NMAC.	<b>Yes. See NM Response to TX at: - page 32, 33, 34, 35</b>	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part. NMAC: The cited statute do not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding New Mexico's initiation of Active Water Resource Management in the Lower Rio Grande do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #296 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 56
297	N/A	The AWRM Framework Rules allows the State Engineer to support water right owners’ creation of agreements that share shortages among themselves rather than strictly adhering to the priority administration system.	See NM-EX 007, D’Antonio 2d Decl. at ¶ 40.	<b>Yes. See NM Response to TX at: - page 32, 33, 34, 35</b>	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding New Mexico's Active Water Resource Management rules in the Lower Rio Grande do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #297 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A	Opp to US - page 56
298	N/A	In 2004, the State Engineer issued a metering order in the LRG, requiring that all groundwater wells in the LRG be metered by March 1, 2006.	NM-EX-430, State Engineer Order No. 168 (Dec. 3, 2004). See NMSA §72-12-27 (1967).	<b>Yes. See NM Response to TX at: - page 32, 33, 34, 35</b>	NM-EX-430: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay. NMSA: The cited statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the origin of New Mexico's well metering requirements in the Lower Rio Grande do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #298 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 56
298	N/A	Following litigation with EBID among others, all irrigation, commercial, multi-family domestic, and municipal wells in the LRG were metered by 2008.	See NM-EX 007, D’Antonio 2d Decl. at ¶ 44.	<b>Yes. See NM Response to TX at: - page 32, 33, 34, 35</b>	n/a	see above (298)	N/A	Opp to US - page 56



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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
299	N/A	Should any water rights owner in the LRG request of the State Engineer a priority call due to water shortage, the State Engineer would promptly take the following actions: a) Investigate the validity and cause of the claimed shortage, and b) Determine appropriate short-term and long-term actions. Any response to a priority call is necessarily dependent upon the cause of the shortage and must take into consideration such things as the public health issues of essential drinking water and sanitation uses. Potential responses include, but are not limited to, release of storage water, curtailment of junior surface water diversions, curtailment of junior groundwater rights, and the possibility of a range of agreed-upon alternatives to strict priority administration. The required analysis, decision on response, and implementation of response could take place in a matter of days for a short-term response to a matter of weeks or months to address long-term or systemic response.	See NM-EX 007, D’Antonio 2d Decl. at ¶ 53; see also NM-EX 226, Rule 30(b)(6) Dep. of the State of New Mexico by and through Barroll (Oct. 21, 2020) at 37:5-22 (errata).	<b>Yes. See NM Response to TX at: - page 32, 33, 35</b>	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part. NM-EX-226: <i>See</i> General Objection 8.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding state administration of priority calls in the State of New Mexico do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #299 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 57
300	N/A	While Reclamation and EBID control delivery of Project water, the State Engineer retains authority over and ensures compliance with all water rights and river diversions of water in the LRG, including the use of New Mexico water outside the state.	See NM-EX 007, D’Antonio 2d Decl. at ¶¶ 6-7.	<b>Yes. See NM Response to TX at: - page 32, 33</b>	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the powers and duties and the actions of the New Mexico State Engineer do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #300 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
301	N/A	A lawsuit for the adjudication of water rights was commenced in the LRG by EBID, and the State intervened in 1996.	State of New Mexico ex rel. State Engineer v. Elephant Butte Irrigation District et al., No. D-307-CV-96-888 (the “LRG Adjudication”).	<b>Yes. See NM Response to TX at: - page 34</b>	<i>State of New Mexico ex rel. State Engineer v. EBID</i> : the cited case does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the details of New Mexico's adjudication process do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #301 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 43 - page 55
301	N/A	As part of the adjudication process, the State Engineer performed a hydrographic survey, including a review of all historic State Engineer and county records relating to claimed water rights, in-person surveys, and aerial photography. Based on all known data, the State Engineer evaluates the information for each claimed water right and makes separate offers of judgment to each claimant within a unique “subfile” to the adjudication. The State Engineer and the claimant may either agree on the Offer of Judgment, mediate a different result, or try the case to the court. The result of those processes then becomes a “Subfile Order” entered by the court.	See NM-EX 007, D’Antonio 2d Decl. at ¶¶ 32-34.	<b>Yes. See NM Response to TX at: - page 34</b>	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.	See above (301)	N/A	Opp to US - page 43 - page 55
301	N/A	The State Engineer’s most recent status report in the LRG Adjudication reflects that there are presently approximately 14,050 subfiles in the adjudication, which encompass 18,546 water right claimants. Approximately 66% of these subfiles have been sent Offers of Judgment and 50% have been adjudicated.	See NM-EX 007, D’Antonio 2d Decl. at ¶ 35.	<b>Yes. See NM Response to TX at: - page 34</b>	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.	See above (301)	N/A	Opp to US - page 43 - page 55

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
302	N/A	Apart from its orders on these individual subfiles, the LRG Adjudication Court has issued a number of orders governing the LRG Adjudication globally. These include the following: a. Stream System 101 (SS 101): In August 2011, the LRG Adjudication court entered a Final Judgment in Stream System 101 that sets the limits on groundwater and surface water use affecting all LRG claimants. In relevant part, the SS 101 Order does the following: i. The Order sets the annual FDR for the LRG at 4.5 AF/acre unless a claimant is able to prove beneficial use of up to 5.5 AF/acre. Surface water and groundwater use combined cannot exceed this total, and surface water available must be exhausted before groundwater may be used.	a. NM-EX 541, Final Judgment in SS-97-101 (SS101 LRG Adjudication Order) (Aug. 22, 2011) (SS101 LRG Adjudication Order). See NM-EX 007, D’Antonio 2d Decl. at ¶ 37(a). a.(i) See NM- EX 541, SS101 LRG Adjudication Order, §§ II(D), V(B).	NO	NM-EX-541,: <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay. NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 43
302	N/A	ii. Consistent with historic Project operations, the maximum FDR for surface water was set at 3.024 AF/acre per year.	a.(ii) See NM-EX 007, D’Antonio 2d Decl. at ¶ 37(a).	NO	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 43
302	N/A	b. Stream System 103 (SS 103): The SS 103 Order addresses domestic wells and is currently on hold. Domestic and stock well use represents approximately 2,000 to 3,000 AF/yr. This less than one percent of total surface water and groundwater use in the Mesilla and Rincon basins. Domestic well and stock water use has a negligible effect on the issues in this case.	b. See NM-EX 007, D’Antonio 2d Decl. at ¶ 37(b).	NO	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 43
302	N/A	c. Stream System 104 (SS 104): The SS 104 Order addressed “the interests of the United States deriving from the establishment of the Rio Grande Project” for determination in the LRG Adjudication.	c. NM-EX 534, Order Designating Stream System Issue/Expedited Inter Se Proceeding No. 104 (Jan. 8, 2010).	NO	NM-EX-534: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	New Mexico’s stated fact, and supporting evidence, are not cited in New Mexico’s Response to Texas’s Motion for Partial Summary Judgment and are therefore non-responsive and irrelevant. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 43
303	N/A	The LRG Adjudication court found that the Project has a surface water priority date of March 1, 1903. No final order has been issued on these Findings.	NM-EX 536, Findings of Facts and Conclusions of Law, State of New Mexico v. EBID (Apr. 17, 2017) (CV-96-888).	Yes. See NM Response to TX at: - page 33	NM-EX-536: <i>See</i> General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico state court adjudication do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #303 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	Opp to US - page 56
304	N/A	With a (non-final) priority date of March 1, 1903, the United States’ Project water rights are senior to most of the groundwater rights in the LRG.	See NM-EX 007, D’Antonio 2d Decl. at ¶ 37(c).	Yes. See NM Response to TX at: - page 33	NM-EX-007: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico state court adjudication do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #304 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but alleged depletions due to pumping in Texas is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A

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305	N/A	Water users in the LRG must comply with applicable state statutory requirements, State Engineer permits, licenses and orders, OSE policy and guidelines, and applicable court orders. The LRG Water Master has specific statutory authority under NMSA 1978, § 72-2-18 (2007) to enforce compliance with these requirements.	See NM-EX 010, Serrano Decl., ¶¶ 11-13, 17; NM- EX 007, D’Antonio 2d Decl. at ¶ 25; NM- EX 232, Serrano Dep. (Feb. 26, 2019) at 94:7-96:24.	<b>Yes. See NM Response to TX at: - page 33</b>	NM-EX- 010, 007: To the extent the cited evidence states Mr. Serrano or Mr. D'Antonio's opinions regarding compliance with the law, the cited evidence does not support the stated “facts” in whole and/or in part. Fed. R. Civ. P. 56(c). The stated “facts” constitute improper legal conclusions in whole or in part. NM-EX-232: <i>See</i> General Objection #8.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding powers and duties of the Lower Rio Grande Watermaster in New Mexico, and related intrastate water administration issues do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #305 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
306	N/A	In enforcing these requirements, the LRG Water Master has a number of metrics and mechanisms to monitor water diversions. Among these, all wells (except single-family domestic and livestock wells), and non-EBID surface water diversions are subject to metering requirements, and water users must report meter readings regularly.	See NM-EX 010, Serrano Decl., ¶¶ 13-14; see also NM-EX 236, Serrano Dep. (Apr. 17, 2019) at 54:22-55:13, 94:7-96:24, 183:19-24; NM- EX 235, Rule 30(b)(6) Dep. of the State of New Mexico by and through Thacker (Sept. 18, 2020) at 33:12-35:17; NM-EX 227, Barroll Dep. (Feb. 5, 2020) at 57:4-58:22.	<b>Yes. See NM Response to TX at: - page 33</b>	NM-EX-010: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-235, 227: <i>See</i> General Objection #8.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding powers and duties of the Lower Rio Grande Watermaster in New Mexico, and related intrastate water administration issues do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #306 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence is not the subject of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
307	N/A	The Water Master is not responsible for assuring or monitoring delivery of Project supply to EBID members; rather, that is the responsibility of EBID. To assure compliance with the SS101 LRG Adjudication Order, during each irrigation season, the Water Master for the Lower Rio Grande Water District receives Project allotment information for each EBID member from the district. Using this data, the Water Master calculates how much of each EBID member’s 4.5 AF/acre (or 5.5 AF/acre) combined water right may be satisfied by the diversion of groundwater. This calculation assumes that EBID members use their full allotments as to surface water diversions and that they use their surface water allotments before using groundwater.	See NM-EX 010, Serrano Decl., ¶¶ 13-14.	<b>Yes. See NM Response to TX at: - page 33</b>	NM-EX-010: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding powers and duties of the Lower Rio Grande Watermaster in New Mexico, and related intrastate water administration issues do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #307 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
308	N/A	The Water Master regularly monitors groundwater wells to ensure compliance.	See NM- EX 010, Serrano Decl., ¶¶ 10, 11, 14-16; NM-EX 010, Rule 30(b)(6) Dep. of the State of New Mexico by and through Thacker (Sept. 18, 2020) at 35:18-38:7; NMSA 1978, § 72-2-18 (2007).	<b>Yes. See NM Response to TX at: - page 33, 38</b>	NM-EX-010: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. Thacker Depo: <i>See</i> General Objection #8. NMSA: The cited statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding powers and duties of the Lower Rio Grande Watermaster in New Mexico, and related intrastate water administration issues do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #308 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
309	N/A	When the Water mater determines that a well is out of compliance, the Water Master actively works with the water user to effect compliance. If local attempts are unavailing, the Water Master refers the issue to the OSE Administrative Litigation Unit for legal action.	See NM-EX 010, Serrano Decl., ¶¶ 10, 11, 14; NM-EX 010, Rule 30(b)(6) Dep. of the State of New Mexico by and through Thacker (Sept. 18, 2020) at 35:18-38:7; NMSA 1978, § 72-2-18 (2007).	<b>Yes. See NM Response to TX at: - page 33, 35, 38</b>	NM-EX-010: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. Thacker Depo: <i>See</i> General Objection #8. NMSA: The cited statute does not constitute factual "evidence" as contemplated by Fed. R. Civ. P. 56(c).	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding powers and duties of the Lower Rio Grande Watermaster in New Mexico, and related intrastate water administration issues do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #309 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. New Mexico’s stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A



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310	N/A	The Water Master for the LRG investigates every over-diversion, including unauthorized surface diversions, in the district. If an over-diversion or potential for over-diversion is discovered during the irrigation season, the Water Master seeks an accommodation for voluntary compliance. If no agreement can be reached, the Water Master refers the matter to the Administrative Litigation Unit for enforcement proceedings. If an over-diversion is discovered after the end of the irrigation season during the process of reconciling the final meter readings of the year, the Water Master effectuates compliance through a written repayment plan.	See NM-EX 010, Serrano Decl. at ¶¶ 22-30; see also NM-EX 235, Rule 30(b)(6) Dep. of the State of New Mexico by and through Thacker (Sept. 18, 2020) at 36:5-38:7; NM-EX 226, Rule 30(b)(6) Dep. of the State of New Mexico by and through Barroll (Oct. 21, 2020) at 22:14-25, 23:1-2; NM-EX 234, D'Antonio Dep. (June 26, 2020) at 317:4-318:7; NM-EX 540, Ryan J. Serrano, Office of the State Engineer, Lower Rio Grande Water Master Annual Report 2018 Accounting Year, at 10 (2019).	Yes. See NM Response to TX at: - page 33, 35, 38	NM-EX-010: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-235, 226: See General Objection #8. NM-EX-540: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding powers and duties of the Lower Rio Grande Watermaster in New Mexico, and related intrastate water administration issues do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #310 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
311	N/A	Pursuant to the SS101 LRG Adjudication Order, certain water users within the LRG are subject to an Ownership Management Program. The program permits farmers who own or manage lands under more than one water right to manage the rights associated with the lands conjointly, but the combination of water rights used may not exceed the total amount allowed under the permitted water rights.	See NM-EX 010, Serrano Decl. at ¶¶ 31-34; see also NM-EX 235, Rule 30(b)(6) Dep. of the State of New Mexico by and through Thacker (Sept. 18, 2020) at 42:9-43:9, 44:8-14; NM-EX 540, Ryan J. Serrano, Office of the State Engineer, Lower Rio Grande Water Master Annual Report 2018 Accounting Year, at 6 (2019).	Yes. See NM Response to TX at: - page 33	NM-EX-010: Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. NM-EX-235: See General Objection #8. NM-EX-540: See General Objection #8; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact is cited in New Mexico's response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding intrastate water administration issues in the State of New Mexico do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #311 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
312	N/A	The New Mexico Legislature statutorily created the New Mexico Interstate Stream Commission ("the ISC") in 1935. NMSA 1978, Section 72-14-3 (1935). The ISC is a permanent body that negotiates interstate stream compacts and has broad powers to investigate, protect, conserve, and develop New Mexico's waters, including both interstate and intrastate stream systems. New Mexico is a party to eight interstate stream compacts, which are comprised of both state and federal law.	See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶¶ 4-5.	Yes. See NM Response to TX at: - page 33	NM-EX-009: See General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #312 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
313	N/A	In addition, the ISC is also responsible for ensuring compliance with provisions of United States Supreme Court Decrees governing water allocations and negotiating controversies that arise related to interstate compacts and court decrees. The ISC is also authorized to investigate and develop New Mexico's water supplies and institute legal proceedings on behalf of New Mexico for planning, conservation, protection, and development of public waters; it is responsible for statewide water planning. It also administers the strategic water reserve pursuant to NMSA 1978, Section 72-14-3.3 (2005, as amended through 2007) to assist complying with interstate stream compacts and court decrees, or endangered species water management in New Mexico.	See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 6. See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 7. See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 8.	Yes. See NM Response to TX at: - page 33	NM-EX-009: See General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #313 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A

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314	N/A	The ISC's hydrologists, engineers, water management professionals, and attorneys analyze data related to New Mexico's interstate streams to assure compliance with all applicable obligations.	See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 9.	Yes. See NM Response to TX at: - page 33	NM-EX-009: See General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #314 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
315	N/A	Significantly, ISC staff reviews water right applications filed with the OSE and will file protests, when necessary, to protect New Mexico's interests and obligations under the New Mexico interstate compacts. ISC staff also provides support in water rights adjudications to protect New Mexico's allocations and obligations under its interstate compacts.	See NM-EX 009, Schmidt- Petersen 2d Decl. at ¶¶ 10-11.	Yes. See NM Response to TX at: - page 33	NM-EX-009: See General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #315 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
316	N/A	The ISC is a lead agency and a member of the executive committee of the Upper Rio Grande Water Operations Model (URGWOM). The purpose of the executive committee is to develop a unified water operations model for the Rio Grande Basin from its headwaters in Colorado to Hudspeth County, Texas. The URGWOM is used for reservoir and river planning, operations, and accounting upstream of Elephant Butte Reservoir.	See NM-EX 009, Schmidt- Petersen 2d Decl. at ¶ 12.	Yes. See NM Response to TX at: - page 33	NM-EX-009: See General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #316 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
317	N/A	The ISC has undertaken significant river and drain maintenance works to aid in Rio Grande Compact compliance. These efforts include removing sediment, removing phreatophytes, maintaining river system infrastructure, operation of the Delta Channel Project, operating the Low Flow Conveyance Channel project (in collaboration with Reclamation and the MRGCD), operating the New Mexico Strategic Water Reserve to ensure compliance with the Compact and other legal requirements (e.g., endangered species protections), and improving river gaging, data management, and reporting capabilities in New Mexico.	See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 13. See id at ¶¶ 14-15, 19-21.	Yes. See NM Response to TX at: - page 33	NM-EX-009: See General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #317 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).	N/A	N/A

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318	N/A	The ISC's river and drain maintenance efforts have contributed to the State of New Mexico's ability to accrue a large volume of Accrued Credit (Compact Article VI) in Elephant Butte Reservoir over the last few decades. This Accrued Credit has allowed New Mexico to relinquish approximately 380,000 AF of its Accrued Credit for use by the Project. In response to issues raised by EBID and others related to Project operations and groundwater use, the ISC has provided infrastructural support to New Mexico water users.	See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 16. See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 17.	Yes. See NM Response to TX at: - page 33	NM-EX-009: <i>See</i> General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #318 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
319	N/A	In the mid-to-late 2000's, the ISC collaborated with the States of Colorado and Texas, and numerous stakeholders, in the Rio Grande Compact Commission's Rio Grande Salinity Management Coalition ("Coalition") to address salinity concerns largely raised by Texas. The ISC and the stakeholders evaluated changes in water quality (mostly salinity) from San Acacia, New Mexico to Fort Quitman, Texas. The Texas complaints were addressed and resolved. No further complaints from Texas about water quality were expressed until the Original No. 141 was filed.	See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 18.	Yes. See NM Response to TX at: - page 33	NM-EX-009: <i>See</i> General Objection #5. Fed. R. Civ. P. 56(c)(4), Fed. R. Evid. 602. The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part. The declarant lacks personal knowledge regarding all possible "Texas complaints" about water quality.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #319 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
320	N/A	The ISC Rio Grande Basin staff periodically communicates with Reclamation's Rio Grande Project water operations staff throughout the year to understand Reclamation's planned and actual Project operations. The purpose is to understand how those operations may both directly impact New Mexico water users at and downstream of Elephant Butte Reservoir and indirectly impact upstream reservoir operations (if Compact Articles VI, VII, or VIII are triggered).	See NM-EX 009, Schmidt-Petersen 2d Decl. at ¶ 22.	Yes. See NM Response to TX at: - page 33	NM-EX-009: <i>See</i> General Objection #5. Fed. R. Civ. P. 56(c)(4). The cited evidence does not support the stated "facts" in whole or in part. Fed. R. Civ. P. 56(c). The stated "facts" constitute improper legal conclusions in whole or in part.	Subject to the stated objections, the fact is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment but does not materially respond to facts stated therein. New Mexico's stated fact and the evidence cited in support regarding the New Mexico Interstate Stream Commission do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. CSMF #320 may relate to New Mexico's motions for partial summary judgment and/or its counterclaims, but the alleged fact and evidence are not related to the subject matter of Texas's Motion for Partial Summary Judgment. Further, New Mexico's response to Texas's Motion for Partial Summary Judgment does not mention "Interstate Stream Commission" or "ISC." New Mexico's stated fact is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	As a factual matter, this has never occurred. Reclamation has always been able to deliver water that was allocated and ordered.	NM-EX 006, Barroll 2nd Decl. ¶ 13; <i>see also</i> NM-CSMF ¶ 177.	Yes, page 27		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding Reclamation water deliveries do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	And in 1999, the OSE issued the Mesilla Valley Administrative Area Guidelines to aid administration of both surface and groundwater in a critical portion of the Lower Rio Grande	NM-EX_007, D'Antonio 2d Decl. ¶¶ 22.	Yes, page 34		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's Mesilla Valley Administrative Guidelines do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	In 2004, the State Engineer created the Lower Rio Grande Water Master District in OSE District IV and required metering of all non-domestic wells	NM-EX-007 D'Antonio 2d Decl. ¶¶ 5, 44; NM-EX 006, Barroll 2d Decl. ¶ 22; NM-EX 533, State Engineer Order No. 180 (Mar. 28, 2007).	Yes, page 34	NM-EX-007: <i>See</i> General Objection #3; NM-EX-533: <i>See</i> General Objection #3; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's Lower Rio Grande Watermaster District do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A



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NONE	N/A	The draft DSRs received a negative response from some water users in the Lower Rio Grande, in particular EBID. N	NM-EX 007, D’Antonio 2d Decl. ¶ 46.	Yes, page 35		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's "DSRs" do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico’s statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	The draft DSRs contained additional provisions designed to protect Texas and Mexico deliveries, if necessary.	, D’Antonio 2d Decl. ¶ 52.	Yes, page 35	NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objection, he fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's "DSRs" do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico’s statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
NONE	N/A	The primary reason the State Engineer never finalized the draft DSRs was the adoption of the 2008 Operating Agreement.	NM-EX 007, D’Antonio 2d Decl. ¶¶ 47-48, 52	Yes, page 35	NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's "DSRs" do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico’s statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
NONE	N/A	Without a quantitative analysis, the 2008 Operating Agreement reduced surface water allocations to New Mexico lands based on the United States’ rationale that the reduced surface water was in exchange for allowing farmers to pump groundwater in New Mexico.	NM-EX 119, United States’ Suppl. Disclosure of Ian M. Ferguson at 4 (Sept. 16, 2019); NM-EX 238, Ferguson Dep. (Feb. 19, 2020) 129:20-24.	Yes, page 35	NM-EX-119: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay. NM-EX-238: <i>See</i> General Objection #8.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico’s statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	This out-of-state transport of New Mexico waters violates New Mexico law	NM-EX 007, D’Antonio 2d Decl. ¶ 50	Yes, page 35		The fact statement included in the brief and the evidence that is cited in New Mexico's response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico water law do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	As anticipated by the United States, the reduced surface water allocations have forced New Mexico farmers to engage in more pumping in the Lower Rio Grande, not less. N	Barroll 2d Decl. ¶¶ 62, 67; NM-EX 010, Serrano Decl. ¶ 36.	Yes, page 36		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the anticipation by the United States relating to additional pumping in New Mexico do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico’s statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	From a Compact perspective, since adoption of the 2008 Operating Agreement, New Mexico—not Texas—is the injured party	NM-EX 006, Barroll 2nd Decl. ¶¶ 80-81; NM-EX 007, D’Antonio 2nd Decl. ¶ 49	Yes, page 36	NM-EX-007: <i>See</i> General Objection #3.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico’s statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas’s Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A

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<u>NM- CSMF ¶#</u>	<u>NM's Prior Numbering System</u>	<u>New Mexico's Stated "Fact"</u>	<u>New Mexico's Supporting Evidence</u>	<u>DID NM CITE TO THE FACT/EVIDENCE IN ITS 12/22/20 RESPONSE TO THE TEXAS MOTION FOR PARTIAL SUMMARY JUDGMENT?</u>	<u>TEXAS'S EVIDENTIARY OBJECTIONS</u>	<u>TEXAS'S RESPONSE</u>	<u>Identification of where NM cited the fact/evidence in its 11/5/20 Motions (NM Notice MSJ; NM Full Supply MSJ; NM Apportionment MSJ)</u>	<u>Identification of where NM cited to the fact/evidence in its Response to the US Motion for Partial Summary Judgment</u>
NONE	N/A	Under the 2008 Operating Agreement, Texas receives far more than its 43% share of Project water.	NM-EX 006, Barroll 2d Decl. ¶ 62	Yes, page 36		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	It has declined to use even the few administrative tools at its disposal, failing to form a groundwater management district anywhere within the Compact area in Texas despite recognizing that groundwater withdrawals in the El Paso area exceed recharge and that there are "pretty sizeable" cones of depression in the area.	NM EX 239, Mills Dep. (Aug. 27, 2020) 28:1-13, 17-25; 29:3-23; 38:1-25; 39:1.	Yes, page 38	NM-EX-239: <i>See</i> General Objection #8.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding impacts of groundwater pumping in the El Paso area do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	The Compact makes no mention of a "1938 Condition" below Elephant Butte, nor does it make any reference to the specific number of acre-feet that Texas now claims is the limit of consumption in New Mexico under the supposed "1938 Condition," which it quantifies at 149,005 acre-feet per year in one of the Texas expert reports. <sup>5</sup>	NM-EX 126, Hutchison Rep. 41, ¶ 135.	Yes, page 40	NM-EX-126: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. The statement merely cites to Texas's evidence and says it's incorrect, with no evidence cited in support. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	As Texas acknowledges, in the early 1980s, Reclamation proposed the D1/D2 Allocation method. Tex. Br. 34; see NM-CSMF ¶ 174. During this time, Project operations were changing from allocations to individual farms, to allocations to Districts	NM-EX 001, Barroll Decl. ¶¶ 20-21	Yes, page 49		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the D1/D2 allocation method do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	In developing this method, Reclamation made "[s]tatistical evaluations of operational records for the period 1951 through 1978," which "provided graphs, equations, and data" which were to be "used to ensure that future allocations to Mexico and the allocations to the U.S. maintain the historical relationship between the delivery of water to U.S. farms and Mexico."	NM-EX 400, WSAP 9; NM-EX 006, Barroll 2d Decl. ¶ 57.	Yes, page 49	NM-EX-400: <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the development of Reclamation's allocation methodology do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	The D2 Curve is based on the historical relationship between Project releases from storage and total Project diversions (including to Mexico) throughout the period 1951-1978 and is, therefore, a measure of Project delivery performance over this 29-year period.	NM-EX 006, Barroll 2d Decl. at ¶ 57	Yes, page 49		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the D2 curve do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A

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NONE	N/A	Reclamation played an active role in this development, advising Project farmers in the late 1940s that Project reservoir levels were getting low and that Project supply may be inadequate	NM-EX 006, Barroll 2d Decl. ¶ 15.	Yes, page 50		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding activities by the U.S. Bureau of Reclamation do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. <b>As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	Reclamation recorded the number of irrigation wells, at least throughout the 1950s, and encouraged Project farmers to pump groundwater, specifically requesting that farmers with wells use them “to the greatest extent possible.”	NM-EX 006, Barroll 2d Decl. ¶ 17; NM-EX 419, RGPH (Water Announcement 1951); NM-EX 417; NM-EX 438, BOR (Water Announcement 1952); EX 433, BOR (Water Announcement 1954); NM-EX 420, RGPH (O&M 1951-57).	Yes, page 50	NM-EX-419, 417, 438, 433, 420: <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding activities by the U.S. Bureau of Reclamation do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. <b>As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	Later, in the 1970s, Reclamation worked with the Districts to develop District-owned irrigation supply wells.	NM-CSMF ¶ 21; NM-EX 006, Barroll 2d Decl. ¶ 21; NM-EX 444, RGHP License.	Yes, page 50	NM-EX-444 <i>See</i> General Objection #9; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objections, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding activities by the U.S. Bureau of Reclamation do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. <b>As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	And as explained below, New Mexico's water use and consumption has not increased since the 1951-1978 period.	NM-EX 012, Sullivan Decl. ¶ 62.	Yes, page 53		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's water use between 1951 and present do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. <b>As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	Texas argues that the Compact “protects the Project and its operations under the conditions that existed in 1938.” Tex. Br. 77. Texas's expert Dr. William Hutchison then opines that these “conditions” are the depletions that occurred in New Mexico in that single year, 1938, NM-EX 012, Sullivan Decl. ¶ 96; NM-EX 126, Hutchison Rep. (May 31, 2019) 41 ¶ 135. There is no basis for this in the record.	NM-EX 012, Sullivan Decl. ¶ 96; NM-EX 126, Hutchison Rep. (May 31, 2019) 41 ¶ 135.	Yes, page 54		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. The statement and evidence cited merely state that there is no evidence in support of Texas's statement, but do not provide any basis for that conclusion. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. <b>As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	The reason for this is simple: depletions within a large area of irrigated agriculture vary widely from year-to-year due to many different factors, but primarily due to differences in yearly temperature and precipitation.	NM-EX 012, Sullivan Decl. ¶ 96.	Yes, page 55		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding general issues relating to depletions do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. <b>As such, Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A



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NONE	N/A	Since 1938, Texas has drilled hundreds of agricultural wells to supplement its surface supply.	NMCSMF ¶ 239; NM-EX 006 Barroll 2d Decl. ¶¶ 17, 27	Yes, page 57		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding wells in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	It is estimated that Texas's total pumping averaged 127,500 AF/y during 1951-2017, with irrigation pumping averaging 41,600 AF/y (155,000 AF/y maximum) and non-irrigation pumping averaging 85,900 AF/y (124,000 AF/y maximum).	NM-EX 012, Sullivan Decl. ¶ 14.	Yes, page 57		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding groundwater pumping in the State of Texas do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	With regard to the return flows, all the parties agree that return flows form part of the Project supply.	NM-EX 006, Barroll 2d Decl. ¶ 46.	Yes, page 58		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding New Mexico's view on the other parties' position on return flows do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	Reclamation, EPCWID and EBID negotiated the 2008 Operating Agreement, with the notable absence of the States as negotiating parties.	NM-EX 008, Lopez 2d Decl. ¶ 35(i).	Yes, page 60	NM-EX-008: <i>See</i> General Objection #2.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1), (2), (4).</b>	N/A	N/A
NONE	N/A	Water supply shortages, the Great Depression, and flooding events that caused the river to move all caused great variations in irrigated acreage in the 1920s and 1930s in both Districts	NMEX 011, Stevens 2d Decl. ¶ 30.	Yes, page 61		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the cause for changes in Project acreage with time do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	A difference now is that due to the reduced supply of surface water in New Mexico resulting from the 2008 Operating Agreement, the aquifer in New Mexico has not recovered as it historically has, and there may be long-term damage.	NM-EX 100, Barroll Rep. 72-76.	Yes, page 63	NM-EX-100: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the 2008 Operating Agreement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	The total farm delivery to New Mexico Project lands from both surface and groundwater has averaged approximately 4.0 AF per acre since 2008.	NM-EX 101, Barroll Reb. Rep. 7-8.	Yes, page 63	NM-EX-101: <i>See</i> General Objection #7; Fed. R. Evid. 801(c), hearsay.	Subject to the stated objection, the fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the specifics of New Mexico's Farm Delivery Requirement do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A

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NONE	N/A	Since 2006, under the D3 Allocation plus Carryover method, Texas has been allocated more than its Compact Apportionment, at the expense of New Mexico	NM-CSMF ¶ 196; NMEX 006, Barroll 2d Decl. ¶¶ 46, 63, 66-68, 72-73, 75	Yes, page 66		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding the D3 allocation do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A
NONE	N/A	This improvement in groundwater conditions would, in turn, have increased Project delivery efficiency and thereby further increased EBID's allocation and delivery at little cost to EPCWID	NM-EX 006, Barroll 2d Decl. ¶ 63.	Yes, page 67		The fact statement included in the brief and the evidence that is cited in New Mexico's Response to Texas's Motion for Partial Summary Judgment does not materially respond to facts stated therein. New Mexico's statement and the evidence cited in support regarding Project "efficiency" do not materially respond to an argument made in Texas's Motion for Partial Summary Judgment. New Mexico's statement in its brief is non-responsive and otherwise not supported by definite, competent, or significantly probative evidence that genuinely and materially responds to a fact stated in Texas's Motion for Partial Summary Judgment. As such, <b>Texas's stated material facts remain undisputed. Fed. R. Civ. P. 56(a), 56(c)(1).</b>	N/A	N/A